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NO SAFE REFUGE

ASYLUM-SEEKERS AND REFUGEES DENIED EFFECTIVE PROTECTION IN TURKEY

AMNESTY
INTERNATIONAL



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Cover photo: Afghan refugee looking out from his flat in Istanbul, March 2016.
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1. EXECUTIVE SUMMARY

The world is experiencing the worst refugee crisis since the Second World War. Approximately 60 million women, men and children are currently displaced due to conflict, violence and persecution. Nearly 20 million of them are refugees outside their home countries, of whom 86% are hosted by developing nations.

In the face of the worst displacement crises in generations, the European Union (EU), the richest political bloc in the world, has actively sought to prevent asylum-seekers and refugees from accessing its territory. In what have been dubbed “Fortress Europe” policies, the EU has erected fences at land borders, deployed ever larger numbers of border guards, and struck deals with neighbouring countries to keep people out. In 2015, EU member states collectively resettled only 8,155 refugees from around the world.

The failure of the international community to share responsibility for hosting refugees has left a few countries coping with large numbers of people. One of these is Turkey, which hosts over three million of the world’s asylum-seekers and refugees. The majority of them – about 2.75 million – are from Syria, but Turkey is also host to approximately 400,000 non-Syrian asylum-seekers and refugees – mainly Iraqis and Afghans as well as significant numbers of Iranians, Somalis and Palestinians. Despite its broadly welcoming attitude towards refugees, such large numbers have inevitably placed a considerable strain both on Turkey’s nascent asylum system and its capacity to meet the basic needs of refugees.

Faced with no reasonable prospect of reaching the EU through safe and regular channels, record numbers of people have risked their lives on irregular journeys by land or sea, with many transiting from Africa and the Middle East through Turkey. In 2015 the International Organization for Migration (IOM) recorded over 1 million irregular sea arrivals to Europe, around 850,000 of which were via the Greek islands. The same year, IOM said 3,771 migrants and refugees had died attempting to cross the Mediterranean Sea, including 805 on the Eastern Mediterranean route.

As the number of refugees and migrants irregularly arriving on the Greek islands continued to rise in the latter half of 2015, even hitherto welcoming states, such as Germany, began to seek ways to prevent and discourage their entry. It was against this backdrop that a number of EU member states, spearheaded by Germany, started negotiating a migration control deal with Turkey towards the end of 2015. These talks culminated, in March 2016, in what has become known as the EU-Turkey Deal.

Under the terms of the agreement, “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey.” This means that three categories of people will be returned: people who do not apply for asylum in Greece; those whose asylum applications are evaluated by the Greek authorities and judged unfounded; and those whose asylum applications are found by the Greek authorities to be inadmissible. In exchange, the EU

promised to: resettle one Syrian refugee from Turkey to the EU for each Syrian refugee returned from Greece to Turkey, up to a maximum of 72,000 people; provide up to 6 billion EUR (about 6.7 billion USD) for a “Facility for Refugees in Turkey;” grant visa-free travel for Turkish nationals by June 2016; and revive the stalled negotiations for Turkey to accede to the EU.

Some elements of the EU-Turkey Deal are not new. Under existing readmission arrangements with Turkey, Greece was required to return people who did not claim asylum and people whose applications for asylum were judged to be unfounded. The third category of returnees under the EU-Turkey Deal – those who are found “inadmissible” – is new, and following changes to Greek asylum law, depends on a case-by-case assessment that Turkey constitutes for the person in question either a “first country of asylum” (the person has already been recognised as a refugee in Turkey or otherwise enjoys sufficient protection there) or a “safe third country” (Turkey can provide protection to the readmitted person). The key innovation, and whole point, of this category of returnee is that it is designed to include those (the majority of those arriving on the Greek islands) who have, *prima facie*, a well-founded claim to international protection.

The justification for the EU-Turkey Deal is the assumption that Turkey is a safe place to which asylum-seekers and refugees can be returned. One obvious way in which a country might not be “safe” is if it violates the principle of *non-refoulement*: the prohibition on the transfer of individuals to countries where they face a risk of serious human rights violations. Previous Amnesty International research has already shown that in late 2015 and early 2016, asylum-seekers and refugees in Turkey were sent back to precisely such a risk in Afghanistan, Iraq and Syria. The “safety” of a country for the purposes of lawfully returning asylum-seekers and refugees is not just to be reckoned in these terms however, but also in the ability of returnees to receive effective protection – i.e. the full enjoyment of their rights as asylum-seekers and refugees in the country to which they are due to be returned.

This briefing focuses on people’s treatment *within* Turkey, and shows that – contrary to what is required under EU and international law – Turkey does not provide *effective protection* to the asylum-seekers and refugees on its territory.

First, asylum-seekers do not have access to fair and efficient procedures for the determination of their status. Turkey’s two-year old asylum system is still in the process of being established, and is not capable of coping with individual applications made by hundreds of thousands of asylum-seekers. Second, asylum-seekers and refugees do not have timely access to what are known as “durable solutions.” The UN Refugee Agency – UNHCR – has identified three such solutions for addressing refugee crises: repatriation (when safe to do so) to countries of origin, integration in host countries, and resettlement to third countries. Because Turkey denies full refugee status to non-Europeans, and because the international community is failing to take a fair share of the world’s displaced people, asylum-seekers and refugees in Turkey do not have adequate access to either of the two relevant durable solutions. Third, asylum-seekers and refugees in Turkey are denied access to means of subsistence sufficient to maintain an adequate standard of living. With state authorities not meeting people’s basic needs – in particular shelter – combined with the significant barriers that people experience in achieving self-reliance, Turkey not providing an environment where asylum-seekers and refugees can live in dignity.

This briefing exposes as a fiction the assumption that Turkey is safe for asylum-seekers and refugees. This conclusion is not delivered, primarily, as a criticism of Turkey. It is understandable that a new system, in a country with an overwhelming number of asylum-seekers and refugees, would struggle. Turkey has already spent considerable sums hosting refugees. The point is, rather, to highlight the recklessness with which the EU has been prepared to countenance the return of refugees and asylum-seekers to a country that is not currently capable of fully respecting their rights. The EU-Turkey Deal is a bad deal for refugees, and returns of asylum-seekers and refugees under the deal should be suspended.

1.1 METHODOLOGY

This report is based on desk and field research carried out between March and May 2016. The desk-based component consisted mainly of a survey of Turkey's domestic primary and secondary legislation, supplemented by a range of reports produced by governmental and non-governmental sources in Turkey as well as the EU. For the field research, in March 2016 an Amnesty International delegation travelled to Ankara, Denizli, Gaziantep, Hatay, Istanbul, and Kilis. Researchers interviewed staff at 13 local and international NGOs that work on refugee-related issues. The names of organizations whose staff Amnesty International interviewed are kept confidential at their request. Delegates also met with UNHCR officials in Ankara and Gaziantep as well as representatives of a municipality in Istanbul. The Directorate General of Migration Management – the body within the Ministry of Interior responsible for refugee protection – declined Amnesty International's request for a meeting. During the field research, delegates interviewed 57 asylum-seekers or refugees: they met with 56 of them in person (27 Afghans, 11 Iranians, nine Iraqis, five Pakistanis and four Syrians) and interviewed one additional Afghan refugee by Skype. Unless otherwise indicated, to protect the asylum-seekers and refugees interviewed for this research, only aliases or initials are used.

Amnesty International would like to thank everyone who contributed to this briefing, in particular the asylum-seekers and refugees.

1.2 TERMINOLOGY

The Turkish authorities have developed unique terminology to describe the asylum-seekers and refugees on their territory. The country's asylum system has a dual structure, with refugees from Syria granted what is called "**Temporary Protection**" as a group, while people of all other nationalities are required to make individual applications for "**International Protection**." There are three categories of International Protection: "refugee," "conditional refugee," and "subsidiary protection beneficiary." Under Turkish law, only asylum-seekers fleeing persecution in Europe qualify as "**refugees**." Under the 1951 *Refugee Convention*, states were initially allowed to limit their obligations in this way. The 1967 Protocol to the Convention removed this limitation, but Turkey continues to maintain it. It is the only Council of Europe state to do so. This means that individuals from non-European countries whose application for International Protection has been accepted are called "**conditional refugees**," while they wait in Turkey for their transfer to another country. The third sub-type of International Protection, "**subsidiary protection**," is provided to people who do not qualify as refugees but need protection because they face the death penalty or torture, or because of armed conflict in their countries of origin.

"**Durable solutions**" refer to the three solutions identified by UNHCR for refugees: voluntary repatriation to the country of origin; local integration in the country of asylum; and resettlement to a third country.

"**Resettlement**" is the relocation of vulnerable refugees – including survivors of violence and torture, women and girls at risk, and those with serious medical needs – to countries where they can fully enjoy their human rights. In Turkey, "resettlement" also refers to the transfer to a third country of "conditional refugees," who may not be particularly vulnerable but because of the country's dual asylum structure are not permitted long-term residence rights in Turkey. Resettlement is one safe and legal "**pathway of admission**" for refugees; it plays an important role in refugee protection and is an effective tool through which the international community can share in the responsibility for refugee crises.

“**Effective protection**” refers to the idea that someone claiming asylum in one country can lawfully be transferred to another country on the grounds that they can be “effectively” protected there. This concept, which has no basis in the *Refugee Convention*, is usually employed in the context of policies permitting the return of asylum-seekers and refugees to a “**safe third country**” (the person can receive protection there) or the “first country of asylum” (the person already has protection there). Amnesty International opposes these policies because they undermine the concept of responsibility-sharing for refugee crises, as well as the obligation to undertake individualized decision-making for asylum claims.

2. BACKGROUND

This chapter discusses the scale of the global refugee crisis, the responsibility for these populations disproportionately shouldered by countries such as Turkey, how the European Union (EU) has exacerbated this imbalance through responses including the EU-Turkey Deal, and the principles that this briefing employs to evaluate the deal's lawfulness.

2.1 TURKEY AND THE GLOBAL REFUGEE CRISIS

The world is experiencing the worst refugee crisis since the Second World War. Approximately 60 million people are currently displaced due to conflict, violence and persecution. Nearly 20 million of them are refugees outside their home countries, of whom 86% are hosted by developing countries.¹ Currently, Syrians represent the largest refugee population in the world at over 4.8 million in May 2016. The international community has offered “pathways of admission” (including resettlement) to just over 200,000 of these people – representing about 4% of the Syrian refugee population.² This means that virtually all Syrian refugees are living in countries neighbouring Syria. Similarly, around 95% of the world's 2.6 million Afghan refugees reside in just two countries: Iran and Pakistan.³ As for Iraqis, the UNHCR estimates the global population of Iraqi refugees or asylum-seekers at just under 370,000, with another 3.6 million internally displaced people.⁴

The global refugee crisis is leaving a few countries to cope with large numbers of asylum-seekers and refugees. One of these is Turkey, which is the largest refugee-hosting country in the world, with a population of over 3 million. The majority of them – about 2.75 million – are from Syria.⁵ Turkey is also host to approximately 400,000⁶ non-Syrian asylum-seekers and refugees – mainly Iraqis and Afghans as well as significant numbers of Iranians, Somalis and Palestinians.⁷ Turkey has, for many years, been broadly welcoming to refugees and, in particular, those from Syria. While its official “open border” policy with Syria has been observed more in rhetoric than in reality in recent months, the fact remains that Turkey has admitted a number of refugees that dwarfs those whom the five-times larger and incomparably richer EU has been prepared to receive. Turkey has done so at considerable expense to its exchequer and without generating significant social tensions. These are real achievements and the analysis of the asylum system and living conditions of refugees in Turkey that this briefing presents should be set against this background.

¹ UNHCR, *Global Trends: Forced Displacement in 2014*, 18 June 2015, available at <http://unhcr.org/556725e69.html>, p. 2.

² UNHCR, *Resettlement and Other Admission Pathways for Syrian Refugees*, 29 April 2016, available at <http://www.unhcr.org/52b2febafc5.html>.

³ UNHCR, “Solution Strategies for Afghan Refugees,” n.d., available at <http://www.unhcr.org/pages/4f9016576.html>.

⁴ UNHCR, *Global Trends: Forced Displacement in 2014*, 18 June 2015, available at <http://unhcr.org/556725e69.html>, p. 15, 25..

⁵ Syria Regional Refugee Response, “Turkey,” 5 May 2016, available at <http://data.unhcr.org/syrianrefugees/country.php?id=224>.

⁶ Turkish officials stated in meetings with NGOs in late 2015 that the number of refugees and asylum-seekers in Turkey, including those with “humanitarian residence permits,” was approximately 400,000.

⁷ European Commission, *EU-Turkey Joint Action Plan - Third Implementation Report*, 4 March 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/implementation_report_20160304_eu-turkey_joint_action_plan_en.pdf, p. 6.

In saying that these conditions are not such as to permit the return of refugees and asylum to Turkey, Amnesty International means less to criticise Turkey, than to highlight the disregard of EU member states for the plight – and rights - of those who have already reached its soil.

2.2 THE EU-TURKEY DEAL

The EU, the richest political bloc in the world, has actively sought to prevent asylum-seekers and refugees from accessing its territory. In what have been dubbed “Fortress Europe” policies, the EU has erected fences at land borders, deployed ever larger numbers of border guards, and struck deals with neighbouring countries to keep people out.⁸ While some of these policies have been introduced under the guise of tackling irregular migration and dangerous people-smuggling, EU member states have failed to offer alternative safe and legal routes into the EU in significant numbers: in 2015 EU member states collectively resettled only 8,155 refugees from around the world.⁹

Increasingly pessimistic about their ability to return to or survive in conflict-ravaged countries, and faced with no reasonable prospect of reaching the EU through safe and regular channels, record numbers of people have risked their lives on irregular journeys by land or sea. In 2015 the International Organization for Migration (IOM) recorded over 1 million irregular sea arrivals to Europe, around 850,000 of which were via the Greek islands.¹⁰ IOM said 3,771 migrants and refugees had died attempting to cross the Mediterranean Sea in 2015, including 805 on the Eastern Mediterranean route.¹¹ In 2015, 90% of irregular journeys to Europe were arranged through smugglers, an industry generating a turnover estimated at 5-6 billion USD. According to the intergovernmental law enforcement agencies, INTERPOL and Europol, people-smuggling has increased in response to the EU’s stricter border controls.¹²

Faced with the growing global refugee crisis, and increasing numbers of desperate people trying to reach Europe, the EU has not attempted to increase the availability of safe and legal routes for refugees; instead the EU and its member states have gone to ever greater lengths to stop people from entering the EU. In late 2015 and early 2016, these measures have primarily focused on reaching agreements with Turkey to prevent irregular departures from its territory.

On 15 October 2015, the EU and Turkey agreed on a Joint Action Plan to prevent irregular migration from Turkey to the EU.¹³ In it, Turkey agreed to intensify its efforts to restrict the movement of people through its territory to Europe and to readmit from the EU all irregular migrants who had transited through Turkey and who were found not to be in need of international protection by EU member states. In exchange, the EU would provide 3 billion EUR (about 3.4 billion USD) to help Turkey meet the needs of Syrian refugees in the country. The Joint Action Plan made no mention of non-Syrian asylum-seekers and refugees.

In the months that followed the Joint Action Plan, the intended decrease in irregular arrivals to Europe did not take place, and the EU and Turkey announced a second, far-reaching agreement

⁸ Amnesty International, *Fear and Fences: Europe’s Approach to Keeping Refugees at Bay*, 17 November 2015, AI Index EUR 03/2544/2015, available at <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>.

⁹ Eurostat, “Resettled Persons – Annual data,” n.d., available at <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00195&plugin=1>.

¹⁰ International Organization for Migration, “IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015,” January 2016, available at <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

¹¹ International Organization for Migration, “IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015,” January 2016, available at <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

¹² INTERPOL-Europol, *Migrant Smuggling Networks*, 17 May 2016, available at http://www.europol.europa.eu/sites/default/files/publications/ep-ip_report_executive_summary.pdf, p. 4.

¹³ European Commission, “EU-Turkey Joint Action Plan: Factsheet,” 15 October 2015, available at http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm.

– the EU-Turkey Deal – formally a “statement”¹⁴ – on 18 March 2016.¹⁵ Under the terms of this deal, certain categories of people crossing irregularly from Turkey into Greek islands after 20 March 2016 will be returned to Turkey. These three categories are: people who do not apply for asylum in Greece; those whose asylum applications are evaluated by the Greek authorities and judged unfounded; and those whose asylum applications are found by the Greek authorities to be inadmissible. Under the EU-Turkey Deal, Turkey also committed to take “any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU.”

In exchange, the EU promised to: resettle one Syrian refugee from Turkey to the EU for each Syrian refugee returned from Greece to Turkey (the “1:1 Scheme”), up to a maximum of 72,000 people; provide up to 6 billion EUR (about 6.7 billion USD) for a “Facility for Refugees in Turkey;” grant visa-free travel for Turkish nationals by June 2016; and revive the stalled negotiations for Turkey to accede to the EU. The EU and Turkey also agreed that once irregular crossings between Turkey and the EU have ended or have been substantially and sustainably reduced, a “Voluntary Humanitarian Admission Scheme” will be activated, but without giving any details about this potential arrangement.

Some elements of the EU-Turkey Deal are not new. Under existing readmission arrangements with Turkey, Greece was required to return people who did not claim asylum and people whose applications for asylum were judged to be unfounded.¹⁶ The third category of returnees under the EU-Turkey Deal – those who are found “inadmissible” – is new and allows EU member states to reject an asylum application without examining its substance.¹⁷

The implementation of the deal is proceeding slowly. By 23 May 2016, since returns to Turkey began under the EU-Turkey Deal, only 280 Syrian refugees had been resettled from Turkey to the EU under the 1:1 Scheme.¹⁸ At the same time, only 441 of the 8,500 people (Syrians and non-Syrians) who arrived on the Greek islands since the deal was signed have been returned to Turkey.¹⁹ On 20 May 2016, in the first such decision Amnesty International has seen since the deal, a Syrian national won an appeal against a decision that would have led to his forcible return to Turkey.²⁰

2.3 LEGAL STANDARDS TO EVALUATE THE DEAL

Under international law, States are entitled to control their borders; this includes expelling foreign nationals from their territories under certain conditions. However, any border control measures that States adopt must conform to their domestic, regional and international legal obligations. In the case of the EU and its member states, these include obligations under the *Refugee*

¹⁴ The document is technically only a “statement,” but as it is usually referred to as a “deal,” Amnesty International will use the latter term in this document. The legal arm of the European Parliament has said that the document is not an agreement (which would have had to be approved by the European Parliament and published in the Official Journal of the European Union), but rather a press release, with no binding legal effect (Nikolaj Nielsen, “EU-Turkey Deal Not Binding, Says EP Legal Chief,” 10 May 2016, *EU Observer*, available at <https://euobserver.com/justice/133385>).

¹⁵ Council of the European Union, “EU-Turkey Statement,” 18 March 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>; European Commission, *Implementing the EU-Turkey Agreement – Questions and Answers*, 4 April 2016, available at http://europa.eu/rapid/press-release_MEMO-16-1221_en.htm.

¹⁶ Norwegian Organisation for Asylum Seekers, *Seeking Asylum in Turkey: A Critical Review of Turkey’s Asylum Laws and Practices*, April 2016, available at <http://www.noas.no/wp-content/uploads/2016/04/NOAS-rapport-Tyrkia-april-2016.pdf>, p. 7.

¹⁷ European Commission, *Implementing the EU-Turkey Agreement – Questions and Answers*, 4 April 2016, available at http://europa.eu/rapid/press-release_MEMO-16-1221_en.htm.

¹⁸ European Commission, “Operational implementation of the EU-Turkey Agreement,” 23 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf, p. 2.

¹⁹ European Commission, “Operational implementation of the EU-Turkey Agreement,” 23 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf, p. 3; Kerin Hope, “Migrant Numbers Returned to Turkey Fall Short,” 15 May 2016, available at <http://www.ft.com/intl/cms/s/0/491d2bf6-1aa7-11e6-a7bc-ee846770ec15.html#axzz494cylHT>.

²⁰ Apostolis Fotiadis, Helena Smith and Patrick Kingsley, “Syrian Refugee Wins Appeal against Forced Return to Turkey,” *The Guardian*, 20 May 2016, available at <http://www.theguardian.com/world/2016/may/20/syrian-refugee-wins-appeal-against-forced-return-to-turkey>.

Convention, European Convention on Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

As far as the EU is concerned, the legal basis for the rapid return of asylum-seekers to Turkey under the EU-Turkey Deal is the EU *Asylum Procedures Directive*. Under the Directive, Greek decision-makers are entitled to return someone to Turkey if the person's asylum application is found (after an individual procedure) "inadmissible" on the basis that for that individual, Turkey is either a "first country of asylum" (the person already has protection there) or a "safe third country" (the person can receive protection there).²¹ The idea, and the essential requirement for the lawfulness of such returns, being that asylum-seekers are able to access "effective protection" in Turkey.²²

The *Asylum Procedures Directive* does not define "effective protection." However, based on UNHCR's interpretation of the safe third country and first country of asylum concepts, as well as EU Member States' international legal obligations, for returns to be lawful, asylum-seekers and refugees must be able to exercise their fundamental rights, including the entitlements set out in the *Refugee Convention*.²³ More specifically, this means that they must be granted: 1-fair and efficient procedures for the determination of their refugee status; 2-timely access to a durable solution such as integration or resettlement; and 3-access to means of subsistence sufficient to maintain an adequate standard of living.²⁴ In the chapters that follow, this briefing examines whether Turkey fulfils these three elements.

There are additional elements that are required for the EU-Turkey Deal to be lawful, which have already been documented by Amnesty International and others, and which this briefing will not cover. To begin with, the Greek process for determining an application's "unfoundedness" or "inadmissibility" must be fair. However, Amnesty International has documented fundamental flaws in the procedure that Greece is implementing under the terms of the deal.²⁵ Furthermore, Greece must not return anyone who is at risk of serious human rights violations in Turkey, or of being sent onwards to a place where they face a risk of serious human rights violations. But Amnesty International has uncovered consistent and compelling evidence that asylum-seekers and refugees in Turkey are at risk of *refoulement* to serious human rights violations in Afghanistan, Iraq and Syria.²⁶ As mentioned previously, on 20 May 2016, a Syrian national won an appeal against a decision that would have led to his forcible return to Turkey.²⁷ Furthermore,

²¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection, Arts. 33(2)(b)-(c), 35, 38.

²² UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, available at <http://www.refworld.org/docid/3fe9981e4.html>, para. 10.

²³ UNHCR, *Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection*, EXCOM Conclusion No. 58 (XL), 13 October 1989, available at <http://www.unhcr.org/3ae68c4380.html>; UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, available at <http://www.refworld.org/docid/3fe9981e4.html>; UNHCR, *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey as Part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the Safe Third Country and First Country of Asylum Concept*, 23 March 2016, available at <http://www.unhcr.org/56f3ec5a9.pdf>. Also see University of Michigan Law School, *The Michigan Guidelines on Protection Elsewhere*, 3 January 2007, available at <http://www.refworld.org/docid/4ae9acd0d.html>.

²⁴ UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, available at <http://www.refworld.org/docid/3fe9981e4.html>, para. 15(f)-(g); UNHCR, *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey as Part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the Safe Third Country and First Country of Asylum Concept*, 23 March 2016, available at <http://www.unhcr.org/56f3ec5a9.pdf>, p. 1-2.

²⁵ Amnesty International, "Greece: Refugees Detained in Dire Conditions amid Rush to Implement EU-Turkey Deal," 7 April 2016, available at <https://www.amnesty.org/en/latest/news/2016/04/greece-refugees-detained-in-dire-conditions-amid-rush-to-implement-eu-turkey-deal/>.

²⁶ Amnesty International, *Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, AI Index EUR 44/3022/2015, 16 December 2015, available at <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>; Amnesty International, "Turkey 'Safe Country' Sham Revealed as Dozens of Afghans Forcibly Returned Hours after EU Refugee Deal," 23 March 2016, available at <https://www.amnesty.org/en/latest/news/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/>; Amnesty International, "Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal," 1 April 2016, available at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

²⁷ Apostolis Fotiadis, Helena Smith and Patrick Kingsley, "Syrian Refugee Wins Appeal against Forced Return to Turkey," *The Guardian*, 20 May 2016, available at <http://www.theguardian.com/world/2016/may/20/syrian-refugee-wins-appeal-against-forced-return-to-turkey>.

shootings and beatings of Syrian refugees at the Turkish border continue to be well-documented.²⁸ There is also evidence that the particular Syrian refugees (including children) who actually agreed to return from Greece to Turkey under the EU-Turkey Deal have been subject to human rights violations in Turkey, including arbitrary detention and denial of access to legal representation as well as specialized medical care.²⁹

²⁸ Human Rights Watch, "Turkey: Border Guards Kill and Injure Asylum Seekers," 10 May 2016, available at <https://www.hrw.org/news/2016/05/10/turkey-border-guards-kill-and-injure-asylum-seekers>.

²⁹ Amnesty International, "Urgent Action: Syrians Returned from Greece, Arbitrarily Detained," AI Index EUR 44/4071/2016, 19 May 2016, available at <https://www.amnesty.org/en/documents/eur44/4071/2016/en/>; Patrick Kingsley and Eiad Abdulatif, "Syrians Returned to Turkey under EU Deal 'Have had no Access to Lawyers'," *The Guardian*, 16 May 2016, available at <http://www.theguardian.com/world/2016/may/16/syrians-returned-to-turkey-after-eu-deal-complain-of-treatment>.

3. A NEW AND UNDER-DEVELOPED ASYLUM SYSTEM

This chapter evaluates whether Turkey fulfils the first requirement for the EU-Turkey Deal to be lawful: namely whether asylum-seekers have access to fair and efficient procedures for the determination of their status. As discussed below, Turkey's asylum system is still in the process of being established, and is not capable of coping with the millions of asylum-seekers and refugees in the country.

3.1 TURKEY'S NEW ASYLUM SYSTEM

Turkey's first asylum law, the *Law on Foreigners and International Protection*, was adopted in 2013 and came into force in April 2014.³⁰ It represented a landmark step in legal protections for asylum-seekers and refugees in Turkey, and was developed in consultation with UNHCR, the Council of Europe, and civil society organizations.³¹ It completely overhauled the country's legal framework for migration-related matters and established a new civilian agency, the Directorate General for Migration Management (DGMM), which – supported by its local offices, the Provincial Directorates for Migration Management – is charged with managing asylum and migration in Turkey.

The *Law on Foreigners and International Protection* is based largely on the EU body of law known as the “asylum acquis,” which aims to establish a Common European Asylum System. As such, Turkey's new law incorporates many EU asylum law models and procedures, including controversial concepts such as “accelerated processing” and the administrative detention of some categories of applicants.³²

The *Law on Foreigners and International Protection* establishes a unique dual asylum structure. On the one hand are refugees from Syria, who are provided with “Temporary Protection” as a

³⁰ Republic of Turkey, *Law on Foreigners and International Protection*, April 2014, available at <http://www.refworld.org/pdfid/5167fbb20.pdf> [LFIP].

³¹ UN Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention – Combined Fourth to Sixth Periodic Report of States Parties: Turkey*, 17 April 2014, UN Doc. CERD/C/TUR/4-6, available at <http://www.refworld.org/docid/565306b64.html>, para. 18.

³² Refugee Rights Turkey, *Country Report: Turkey*, ECRE-AIDA Asylum Database Information, December 2015, available at http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_update.i.pdf, p. 18 [RRT Report, December 2015].

group.³³ On the other hand are asylum-seekers from other countries, who can be granted one of three individual “International Protection” statuses from DGMM: 1-“refugees,” who are fleeing from events in Europe, and who are permitted long-term integration in Turkey; 2-“conditional refugees,” who are fleeing from events outside Europe, and who must await resettlement to a third country; and 3-“subsidiary protection” beneficiaries, who do not qualify as refugees or conditional refugees but who require protection because they face the death penalty, torture, or generalized violence amounting from armed conflict in their country of origin.³⁴ For all International Protection applicants, Turkey has what is called a “satellite city policy,” which requires them to live in a designated province (which excludes the largest cities of Ankara, Istanbul and Izmir).³⁵ Turkey has also recently required Syrian refugees under Temporary Protection to remain in the province in which they first registered, but unlike International Protection applicants, they are not subject to periodic reporting requirements.³⁶

In the new system, the precise role of UNHCR, which for decades was the principal *de facto* refugee status decision-maker in Turkey, is unclear. In theory, the *Law on Foreigners and International Protection* made DGMM the sole decision-maker on asylum matters. In practice, however, UNHCR is continuing to undertake registration and refugee status determination for a limited number of individuals whom they identify as being particularly vulnerable – based on UNHCR’s own mandate, not Turkish law – for non-Syrians, as well as the registration of particularly vulnerable Syrian refugees. According to the NGO Refugee Rights Turkey, the legal significance of UNHCR’s RSD decisions in Turkey’s new asylum system is unclear.³⁷

3.2 THE INFORMATION GAP

There is an absence of comprehensive, publicly available data about the implementation of Turkey’s new asylum system. As a result, the precise numbers and nationalities of non-Syrian refugees in the country are unknown. The only clear and publicly available information is about the total numbers by province of registered Syrian refugees inside and outside the government-run camps.³⁸

The information gap resulting from the paucity of publicly available data is exacerbated by the Turkish authorities’ refusal to provide information upon request. The Turkish authorities declined Amnesty International’s request for a meeting in March 2016, and refused to provide any of the data that researchers requested in writing. On 2 February 2016, Amnesty International sent a letter to DGMM asking for information about: the number and breakdown of International Protection applicants (refugees, conditional refugees and subsidiary protection beneficiaries); the number and breakdown of positive decisions; as well as the number of people who had not yet applied for International Protection status but who had been given an interview in order to submit an application.³⁹ On 19 February 2016 the request was refused in writing, on the basis that some of these statistics would shortly be available on the DGMM website (as of late May 2016, this information was still not online) and that the provision of the other statistics was not permitted under the *Freedom of Information Act*.⁴⁰ On 4 March 2016 Amnesty International appealed the

³³ LFIP Art. 91; Republic of Turkey, *Temporary Protection Regulation*, 22 October 2014, available at http://www.goc.gov.tr/files/_dokuman28.pdf [TPR].

³⁴ LFIP Arts. 61-63.

³⁵ LFIP Art. 71.

³⁶ Norwegian Organisation for Asylum Seekers, *Seeking Asylum in Turkey: A Critical Review of Turkey’s Asylum Laws and Practices*, April 2016, available at <http://www.noas.no/wp-content/uploads/2016/04/NOAS-rapport-Tyrkia-april-2016.pdf>, p. 29-30.

³⁷ RRT Report, December 2015, p. 9.

³⁸ Directorate General of Migration Management, “Temporary Protection,” 5 May 2016, available at http://www.goc.gov.tr/icerik3/temporary-protection_915_1024_4748.

³⁹ Letter from Amnesty International Turkey to DGMM (Ankara), 2 February 2016.

⁴⁰ Letter from DGMM to Amnesty International Turkey, 19 February 2016, reference number 89486870-622.03-6764.

refusal decision to the Board for Evaluation of Information Requests.⁴¹ On 4 April, the Board informed Amnesty International that it had rejected the appeal.⁴² On 29 March 2016 Amnesty International sent a request to the Prime Ministry's office for information about the housing support provided to asylum-seekers and refugees; by late May 2016, there had been no reply.⁴³ Other civil society organizations have experienced similar difficulties in obtaining information from the Turkish authorities.⁴⁴

3.3 THE IMPLEMENTATION GAP

Although DGMM declined to meet Amnesty International and did not provide any information in response to the organization's multiple written requests, all the available evidence indicates that many crucial aspects of the country's new asylum system, as set out in the *Law on Foreigners and International Protection*, are not operating in practice.

Establishing a new asylum procedure, setting up new institutions and training new staff takes time and is, in any case, difficult. Unsurprisingly, therefore, there is still a lack of institutional capacity within the Turkish asylum system itself. The Foreigners Police, which had been responsible for asylum decisions before 2014, continued to register International Protection applicants until May 2015.⁴⁵ In December 2015, Refugee Rights Turkey reported that it was unclear how many of DGMM's anticipated 2,640 staff or 1,680 migration experts had been hired and trained.⁴⁶

Since the new asylum law came into effect, the Turkish authorities have failed to clarify how many of the country's hundreds of thousands of non-Syrian asylum-seekers have received a decision about their International Protection status – either positive or negative. Turkish officials stated in meetings with NGOs in late 2015 that the number of refugees and asylum-seekers in the country was approximately 400,000.⁴⁷ About two-thirds (266,379) of these people have registered with UNHCR, whose registration data provides a sense of the breakdown of nationalities, with the most common countries of origin being Iraq (123,075), Afghanistan (105,607) and Iran (26,028).⁴⁸ But the number of people whose applications for International Protection have been accepted is unknown, as the very limited public information on the state of decision-making is contradictory. The Turkish authorities told the European Commission that they had made a total of 459 decisions in 2015, without citing the acceptance rate,⁴⁹ but later asserted that in 2015 they had made nearly ten times that – 4,115 decisions (3,364 positive grants of International Protection status and 751 rejected applications).⁵⁰ The breakdown of successful applications (“refugee,” “conditional refugee,” and “subsidiary protection”) was not disclosed. Later, DGMM claimed that it was able to scale up its operations from the earlier rate – either several hundred or several

⁴¹ Letter from Amnesty International Turkey to the Board for Evaluation of Information Requests, 4 March 2016.

⁴² Letter from the Board for Evaluation of Information Requests to Amnesty International Turkey, 4 April 2016, reference number 88428622-622.01-403.

⁴³ Letter from Amnesty International Turkey to the Prime Ministry's Office, 29 March 2016.

⁴⁴ Norwegian Organisation for Asylum Seekers, *Seeking Asylum in Turkey: A Critical Review of Turkey's Asylum Laws and Practices*, April 2016, available at <http://www.noas.no/wp-content/uploads/2016/04/NOAS-rapport-Tyrkia-april-2016.pdf>, fn 33; Hacettepe University Migration and Politics Research Center and Turkish Confederation of Employer Associations, *Perspectives, Expectations and Suggestions of the Turkish Business Sector on Syrians in Turkey*, 30 December 2015, available at <http://tisk.org.tr/wp-content/uploads/2016/01/goc-rapor-ing.pdf>, p. 74-75; RRT Report, December 2015, p. 9-10.

⁴⁵ RRT Report, December 2015, p. 31.

⁴⁶ RRT Report, December 2015, p. 28.

⁴⁷ According to the Turkish officials at these meetings, the 400,000 figure includes people who are granted permission to reside in Turkey on humanitarian grounds (“Humanitarian Residence Permit,” LFIP Art. 46) but are not International Protection applicants or beneficiaries.

⁴⁸ UNHCR Turkey, “UNHCR Turkey's Monthly Statistics as of April 2016,” 30 April 2016, available at [http://www.unhcr.org/turkey/uploads/root/eng\(48\).pdf](http://www.unhcr.org/turkey/uploads/root/eng(48).pdf).

⁴⁹ European Commission, *EU-Turkey Joint Action Plan – Second Implementation Report*, 10 February 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_01_en.pdf, p. 6.

⁵⁰ Directorate General of Migration Management, *2015 Türkiye Göç Raporu*, April 2016, available at http://www.goc.gov.tr/files/files/_2015_g%C3%B6%C3%A7_y%C4%B1ll%C4%B1k_rapor_18_04_16.pdf, p. 80-81.

thousand decisions in an entire year (2015) – to making over 30,000 decisions in a single month (April 2016).⁵¹

Irrespective of the quantity of asylum applications that have been processed, concerns remain regarding the quality of the decision-making. The Turkish authorities are not consistently fulfilling the procedural fairness provisions set out in the *Law on Foreigners and International Protection*. Although the law stipulates that a decision to refuse an International Protection application must include the “material reasons and legal grounds” for the refusal,⁵² Refugee Rights Turkey has stated that none of the negative decisions received to date by International Protection applicants that were seen by the NGO contained any details about the grounds for their rejection.⁵³ The speed at which the 30,000 decisions reportedly made in April 2016 raises serious doubts about their quality. In addition, the time limits for asylum procedures are not implemented in practice; neither the mandatory 30 day limit between the submission of an application and registration interview (which can stretch to several months in some places),⁵⁴ nor the non-binding six month limit for the conclusion of asylum applications.⁵⁵ Furthermore, it is unlikely that unsuccessful applicants’ rights to administrative review and judicial appeal – as set out in the *Law on Foreigners and International Protection*⁵⁶ – are fully implemented; the European Commission reported that between 2014 and May 2016, the administrative courts had ruled on only 28 cases (of which 19 concerned the refusal of International Protection applications), with DGMM winning 27 of the cases.⁵⁷ In the context of a country with hundreds of thousands of people within the International Protection system, the very low number of cases to reach the courts raises serious doubts about access to review procedures.

Finally, the *Law on Foreigners and International Protection* provides for the administrative detention of certain kinds of asylum-seekers, and these people’s access to fair asylum procedures is particularly problematic. Under Turkish law, International Protection applications made from detention are subject to accelerated procedures.⁵⁸ According to civil society organizations working with refugees, asylum-seekers deprived of their liberty in Turkey experience myriad difficulties in seeking and securing legal representation, and lawyers experience problems in visiting detained clients – who are often in very remote locations across the country – and in obtaining a power of attorney.⁵⁹ Lawyers and civil society organizations have reported particularly serious violations of the procedural fairness rights of asylum-seekers and refugees detained at a centre in Erzurum province,⁶⁰ which is the same facility at which Amnesty International documented serious abuses in late 2015,⁶¹ and which (as discussed further in this briefing) the EU has stated will be transformed into an accommodation centre.⁶² These concerns about detainees’ access to fair

⁵¹ European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 15.

⁵² LFIP Art. 78(6).

⁵³ RRT Report, December 2015, p. 37.

⁵⁴ LFIP Art. 75(1); RRT Report, December 2015, p. 31.

⁵⁵ LFIP Art. 78(1); Refugee Rights Turkey, *Country Report: Turkey*, ECRE-AIDA Asylum Database Information, May 2015, available at http://www.asylumineurope.org/sites/default/files/report-download/aida_turkey_final.pdf, p. 23; European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 15.

⁵⁶ LFIP Art. 80.

⁵⁷ European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 16.

⁵⁸ LFIP Art. 79(1)(ç).

⁵⁹ Mülteci-Der and Pro-Asyl, *Observations on the Situation of Refugees in Turkey*, 22 April 2016, available at <https://www.proasyl.de/wp-content/uploads/2015/12/M%C3%BCiteci-DER-OBSERVATIONS-ON-REFUGEE-SITUATION-TURKEY-APRIL-2016.pdf>, p. 6-14; RRT Report, December 2015, p. 52.

⁶⁰ Amnesty International Turkey, “Aşkale Geri Gönderme Merkezi’nde Neler Oluyor?,” 2 January 2016, available at <http://amnesty.org.tr/icerik/2/1776/askale-geri-gonderme-merkezi%E2%80%99nde-neler-oluyor>.

⁶¹ Amnesty International, *Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, AI Index EUR 44/3022/2015, 16 December 2015, available at <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>.

⁶² European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 16.

procedures are particularly salient in the context of the EU-Turkey Deal, given that most of the 441 people returned from Greece under the terms of the deal have been detained,⁶³ and some denied access to legal representation – including at a detention camp in Düziçi in Osmaniye province.⁶⁴ This is a facility where Amnesty International research in late 2015 showed that people were being pressured – or actually forced – to return to a risk of serious human rights violations in Iraq and Syria.⁶⁵

In the course of their field research, Amnesty International researchers met with one family who said they experienced problems in lodging an asylum claim from detention in western Turkey. In Istanbul, Amnesty International met with “Salar,” an Afghan man⁶⁶ who said that he was apprehended by the Turkish coastguard, along with his mother, wife, sister-in-law, and three children (two boys aged three and eight, and a six-year old daughter), while they were trying to reach Greece by boat on the night of 29 February / 1 March 2016. He explained that he and his family were subsequently detained in what he described as a “prison” in Aydın for 11 days, and denied their right to claim asylum. Salar said: “All this time I was asking for asylum, asking to talk with UNHCR. [The police] said to me: ‘You cannot go to UNHCR. You’re criminals now,’” apparently referring to the family’s attempted irregular entry into Greece. Salar told researchers that there were over 200 other people in detention, including over 100 Pakistanis, 30-60 Iraqis, 30 Afghans, 15 Iranians, 10 Syrians, as well as three or four Russians. The man told Amnesty International that the police threatened to return him and his entire family to Kabul, where he says his life is at risk because he is a human rights defender. After efforts by Amnesty International and other organizations, Salar said that about seven days into their detention he and his family were permitted to submit an International Protection application, and were released on 12 March 2016.

⁶³ Dutch Council for Refugees and European Council on Refugees and Exiles, *The DCR/ECRE Desk Research on Application of a Safe Third Country and a First Country of Asylum Concepts to Turkey*, May 2016, available at <http://www.statewatch.org/news/2016/may/eu-turkey-DCR-ECRE.pdf>, para. 32.

⁶⁴ Amnesty International, “Urgent Action: Syrians Returned from Greece, Arbitrarily Detained,” AI Index EUR 44/4071/2016, 19 May 2016, available at <https://www.amnesty.org/en/documents/eur44/4071/2016/en/>; Patrick Kingsley and Eiad Abdulatif, “Syrians Returned to Turkey under EU Deal ‘Have had no Access to Lawyers,’” *The Guardian*, 16 May 2016, available at <http://www.theguardian.com/world/2016/may/16/syrians-returned-to-turkey-after-eu-deal-complain-of-treatment>; European United Left – Nordic Green Left – European Parliamentary Group, “What Merkel, Tusk and Timmermans Should Have Seen During their Visit to Turkey,” May 2016, available at <http://www.statewatch.org/news/2016/may/ep-GUENGL-report-refugees-Turkey-deal.pdf>.

⁶⁵ Amnesty International, *Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, AI Index EUR 44/3022/2015, 16 December 2015, available at <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>.

⁶⁶ Unless otherwise indicated, all information from this paragraph derives from electronic and phone communications 1-20 March 2016, and Istanbul interview 14 March 2016.

4. NO TIMELY ACCESS TO A DURABLE SOLUTION

This chapter discusses the second requirement for the return of asylum-seekers and refugees to Turkey under the EU-Turkey Deal, namely that people are able to access what are known as “durable solutions.” UNHCR has identified three possible ways in which this obligation can be met: repatriation (when safe to do so) to countries of origin, integration in host countries, and resettlement to third countries. In the absence, to date at least, of a large scale resettlement programme from Turkey, and with little prospect of safe return for Syrians, and indeed many other refugees, the question of the long-term status and attendant rights of persons in need of international protection becomes particularly important. Turkey’s ability to provide durable solutions to refugees is severely compromised, however, by the continuing denial of full refugee status to non-Europeans.

4.1 INTEGRATION

Virtually all of Turkey’s 3 million refugees are non-European. However, under the dual system which Turkey maintains for asylum-seekers and refugees, non-Europeans cannot be granted full refugee status. This means that *successful* International Protection applicants from non-European countries like Afghanistan and Iraq are considered “conditional refugees” who must await resettlement to a third country.⁶⁷ Because they are seen as temporary residents only, they are denied long-term integration in Turkey, meaning that they have less robust rights – including regarding access to the labour market, as discussed further below – than European refugees. In addition, the protection granted to Turkey’s 2.74 million Syrian refugees is also temporary, does not lead to a more permanent status, and can be terminated unilaterally by a Council of Ministers’ decision, after which they would be required to leave the country.⁶⁸

According to UNHCR, in order for returns under the EU-Turkey Deal to be lawful, Turkey must extend long-term integration to non-Europeans.⁶⁹ This appears highly unlikely, as the Government of Turkey has stated that the conditions under which it would consider changing its policy would

⁶⁷ LFIP Art. 62.

⁶⁸ TPR Arts. 11, 14.

⁶⁹ UNHCR, *Legal Considerations on the Return of Asylum-Seekers and Refugees from Greece to Turkey as Part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the Safe Third Country and First Country of Asylum Concept*, 23 March 2016, available at <http://www.unhcr.org/56f3ec5a9.pdf>, p. 6.

include EU member states showing “the necessary sensitivity on burden-sharing” for hosting refugees, as well as the signing of Turkey’s EU Accession Treaty.⁷⁰

4.2 RESETTLEMENT

Turkey is the country hosting the largest number of asylum-seekers and refugees in the world, at over 3 million. In Turkey, both “conditional refugees” (successful International Protection applicants who are not from Europe) and particularly vulnerable Syrian refugees under Temporary Protection, are eligible for resettlement to a third country. UNHCR is responsible for submitting resettlement cases from Turkey to other countries.

UNHCR’s Turkey office is trying to ensure that Syrian and non-Syrian refugees can be resettled from Turkey, and submitted 18,260 cases for resettlement in 2015.⁷¹ However, in 2015 just 7,567 people were resettled from Turkey, of whom 1,140 were Syrian.⁷² This represents about 0.25% of the country’s 3 million, and growing, asylum-seeker and refugee population.

The time that someone has to wait for resettlement from Turkey will depend on a variety of factors – not only the time it takes for the national asylum procedure to be completed, but also the number of resettlement places on offer from the international community. Wealthy states in the EU and elsewhere – in line with the concept of international cooperation, set out in the *Refugee Convention* – should be sharing responsibility for some of Turkey’s 3 million asylum-seekers and refugees, and taking action to ensure that they have timely access to resettlement as well as other “pathways of admission” (options that allow refugees to legally enter and reside in a country). However, most countries in the world are continuing to shirk their resettlement responsibilities – not only with respect to Turkey but towards other nations hosting large number of refugees.⁷³ Only 30 countries in the world offer any resettlement places at all.⁷⁴

While the EU-Turkey Deal does refer to increasing resettlement from Turkey, the precise commitments of EU member states remain unclear, beyond the resettlement anticipated in the context of the 1:1 Scheme (capped, notionally at 72,000). The deal does, also, refer to the potential creation of a “Voluntary Humanitarian Admission Scheme,” “[o]nce irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced.”⁷⁵ There has been little apparent impetus on this aspect of the deal, since it was struck – at least on the part of European states. Turkish President Recep Tayyip Erdoğan has, however, been clearer in his expectation of greater responsibility-sharing on the part of European governments.⁷⁶

EU member states should be looking at activating such a scheme, in meaningful numbers, without delay.

⁷⁰ UN Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention – Combined Fourth to Sixth Periodic Report of States Parties: Turkey*, 17 April 2014, UN Doc. CERD/C/TUR/4-6, available at <http://www.refworld.org/docid/565306b64.html>, para. 96.

⁷¹ UNHCR, *Resettlement Fact Sheet*, 2015, available at <http://www.unhcr.org/524c31a09.pdf>.

⁷² UNHCR, *Stabilizing the Situation of Refugees and Migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016*, 3 March 2016, available at <http://www.unhcr.org/56d94f7e9.pdf>, p. 4.

⁷³ Amnesty International, *The Global Refugee Crisis: A Conspiracy of Neglect*, AI Index POL 40/1796/2015, 15 June 2015, available at <https://www.amnesty.org/en/documents/pol40/1796/2015/en/>.

⁷⁴ Amnesty International, “Refugee Resettlement Changes Lives,” March 2016, available at <https://www.amnesty.org/en/latest/campaigns/2016/03/why-does-refugee-resettlement-change-lives/>.

⁷⁵ Council of the European Union, “EU-Turkey Statement,” 18 March 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

⁷⁶ Recep Tayyip Erdoğan, “When the World Failed Syria, Turkey Stepped In. Now Others Must Help,” *The Guardian*, 23 May 2016, available at <http://www.theguardian.com/commentisfree/2016/may/23/world-failed-syria-turkey-refugee-crisis>.

4.3 THE CASE OF “FAIZA” AND HER SISTER: WAITING YEARS FOR RESETTLEMENT

The case of two young Afghan sisters⁷⁷ illustrates the frustration and desperation experienced by people awaiting resettlement from Turkey.

Of Afghan origin, they were born and raised in Iran as asylum-seekers. In late 2012, at the ages of 17 and 20 respectively, they ran away from home to avoid what the youngest – “Faiza” – described to Amnesty International as forced marriages. “When the time came for our marriages,” she said, “we decided to run.” With the help of contacts they found through friends, they managed to join a family that was paying smugglers to make the arduous three-day crossing over the mountains to Turkey.

The sisters registered with UNHCR in Ankara and moved to a “satellite city,” in line with Turkey’s policy of requiring asylum-seekers to live in designated provinces. Under Turkey’s previous asylum framework, in which UNHCR played a central role, they were recognized as refugees (because of the threat from their family) within about three months – in early 2013.

In the three years that followed, they waited in vain for an interview at the embassy of a resettlement country. Faiza told Amnesty International: “We were accepted as refugees but it didn’t change anything in our lives.” Faiza also said that apart from a one-time rent payment by the Turkish Foreigners Police, they did not receive any assistance from either the Turkish authorities or UNHCR. In order to earn money to pay rent and meet other basic needs, they did piecemeal work at home, such as pottery and handicrafts, and cooked and cleaned for their neighbours. They also received donations from local people, particularly during religious holidays such as Eid-al-Fitr at the end of Ramadan.

The generosity of some of the local people, however, was a double-edged sword. As Faiza described her experience, the kindness to the sisters was also bound up in people’s intent to get them married. Faiza said: “People were very suspicious of us as two single women. Our neighbours told us: ‘You mustn’t do anything shameful here.’ Even the police joked with us about marriage – they said: ‘Just get married and you can live in Turkey.’” Faiza said that, of necessity, she and her sister did not openly reject these suggestions to marry, and continued to cook and clean for their neighbours.

Faiza told Amnesty International: “Finding and renting a house as single women – and as refugees – is very hard in Turkey.” She told Amnesty International that asylum-seekers and refugees in their city were fending for themselves: “Everyone was trying to solve their problems by themselves. Some women had to sleep with their landlords to pay for rent.” Faiza said that this did not happen to them.

In late 2015, after nearly three years of waiting, the sisters decided to leave Turkey. Faiza said that they could not support themselves, and were no longer able to put off their neighbours’ attempts to get them married: “We had to run again.”

The sisters used their remaining savings to take a smugglers’ boat to Greece, after which they made their way to a Nordic country (known to Amnesty International but kept confidential at Faiza’s request), reaching it about two weeks later. The journey from Turkey was difficult and dangerous. As Amnesty International has documented, women and girl asylum-seekers travelling through Europe are at risk of violence, assault, exploitation and sexual harassment at every stage of their journey, with governments and aid agencies failing to provide even basic

⁷⁷ Some details have been withheld for their safety. Unless otherwise indicated all information from the boxed text derives from London Skype interview with “Faiza,” 15 April 2016; and Istanbul interview with someone familiar with the sisters’ case (name withheld at the person’s request), 15 March 2016.

protections against these dangers.⁷⁸ The sisters pretended to be part of another Afghan family, because other asylum-seekers and refugees were suspicious of them as two women travelling alone: “The other refugees looked at us a lot. They knew we were alone. They thought we were runaway girls – bad girls.” She explained: “During the journey there was the danger of dying at sea. But there was also the danger of the people who want to hurt you in any way. Up until the last train station in Europe, there were people trying to touch us.” “It was so risky,” she continued, “but we survived.”

Faiza and her sister, now aged 21 and 24, are living in a Nordic country, awaiting a decision about their asylum applications. Although the situation is difficult, they are given accommodation and food. “We are getting used to the situation – we are planning on learning the language, starting some studies and finding a job. But first we must wait for the results of our application. We are just waiting now.”

Faiza said that had there been any reasonable prospect of leaving Turkey safely and regularly, and some support while waiting for the process to conclude, she and her sister would have waited. She explained: “We definitely would have waited. If there was some hope – if there was any hope of resettlement, we would have waited. We were really scared of the journey to Europe because we knew it was dangerous. But we came to this final point – we were so desperate. We said to ourselves: ‘Maybe we will die, maybe we won’t arrive – but it doesn’t matter because we can’t stay in Turkey anymore.’”

⁷⁸ Amnesty International, “Female Refugees Face Physical Assault, Exploitation and Sexual Harassment on their Journey through Europe,” 18 January 2016, available at <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>.

5. INADEQUATE SUPPORT TO LIVE IN DIGNITY

This chapter assesses whether Turkey meets the third criterion for effective protection: access to means of subsistence sufficient to maintain an adequate standard of living. With state authorities unable to meet people's basic needs – in particular shelter – combined with the significant barriers that people experience in achieving self-reliance, the reality is that Turkey is failing to provide an environment where asylum-seekers and refugees can be guaranteed the ability to live in dignity.

5.1 STATE AUTHORITIES NOT MEETING BASIC NEEDS

One clear gap in the new asylum system is access to adequate housing for refugees and asylum-seekers. Even prior to the massive influx of Syrian refugees beginning in 2011, Turkey faced serious challenges ensuring adequate housing for its own citizens. As a State party to the *International Covenant on Economic, Social and Cultural Rights*, Turkey is required to adopt a national housing strategy,⁷⁹ but has still not done so. The UN Committee on Economic, Social and Cultural Rights has expressed concern at the “acute shortage of housing” in the country – a shortfall estimated at three million units in 2011.⁸⁰

In addition, some of the housing that does exist does not meet standards of adequacy. In 2014, Turkey's National Income and Living Conditions Survey found that over a third of the country's population lived in dwellings with problems such as “leaking roof, damp walls/floors/ foundation, rot in window frames/floors,” while 38.7% had “heating problem[s] with their dwellings due to [insulation].”⁸¹ It is hardly surprising, against this background, that Turkey is struggling to meet the shelter needs of the asylum-seekers and refugees on its territory.

⁷⁹ *International Covenant on Economic, Social and Cultural Rights*, UNTS, vol. 993, p. 3, CTS 1976/46, Art. 11; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The Right to Adequate Housing*, UN Doc. E/1992/23, 13 December 1991, available at <http://www.refworld.org/docid/47a7079a1.html>.

⁸⁰ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Turkey*, 12 July 2011, UN Doc. E/C.12/TUR/CO/1, para. 28.

⁸¹ Turkish Statistical Institute, “Press Release: Income and Living Conditions Survey, 2014,” 18 September 2015, available at <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=18633>.

The vast majority of the country's asylum-seekers and refugees are living in privately rented accommodation. The *Law on Foreigners and International Protection* explicitly requires International Protection applicants and beneficiaries to pay for their own accommodation.⁸² And although the government is accommodating 264,169 Syrian refugees in camps in the southern border provinces,⁸³ it cannot realistically provide shelter for the remaining 2.48 million. This means that about 3 million asylum-seekers and refugees in Turkey are left to try to meet their own shelter needs as best they can.

In any population, some people will be unable to provide for their own accommodation – for a range of reasons, including lack of money, inability to work due to age or illness, and particular vulnerability – but Turkey's facilities to house asylum-seekers and refugees who cannot provide for themselves are wholly inadequate. A discretionary provision in the *Law on Foreigners and International Protection* authorizes DGMM to establish "reception and accommodation centres."⁸⁴ However, there is currently only one Reception and Accommodation Centre in operation in the country. It is located in the remote central Anatolian province of Yozgat and accommodates a maximum of what has been variously reported as either 50 or 100 people.⁸⁵ The *Temporary Protection Regulation* also contains a discretionary provision on accommodation stating that Syrians outside of the camps who are "in need may also be accommodated, to the extent possible, in places to be determined by the governorates."⁸⁶ As noted above, the authorities refused to provide Amnesty International with any information about the extent to which these discretionary provisions on shelter have been implemented.

All the available evidence indicates that the housing conditions of most asylum-seekers and refugees in Turkey are inadequate. The most recent government analysis, dating from 2013, found that 25% of Syrian refugees residing outside of the camps lived in "ruins or make-shift arrangements," and that 62% lived in housing units of eight or more people, resulting in severe overcrowding, with the average number of rooms per housing unit being 2.1 rooms.⁸⁷ In 2014, field research conducted by the Turkish Medical Association confirmed that most houses in which Syrian refugees reside were in poor physical condition, and that some people lived in parks or ruined homes.⁸⁸

The situation has not improved since the *Law on Foreigners and International Protection* came into effect in April 2014. A late 2015 housing study conducted by an NGO in a southern border province, which surveyed over 36,000 Syrian refugees, found that only 33.3% were living in modern, well-insulated buildings, with the rest residing in accommodation ranging from structures with poor insulation and problems with humidity and cold (43.3%), to tents (17.9%), uninhabitable buildings such as garages or unfinished buildings (4.96%) and public places such as mosques or parks (0.55%).⁸⁹ In January 2016, the UN Committee on the Elimination of Racial Discrimination expressed concern about Syrian refugees' poor living conditions across Turkey, as

⁸² LFIP Art. 95(1).

⁸³ Directorate General of Migration Management, "Temporary Protection," 5 May 2016, available at http://www.goc.gov.tr/icerik3/temporary-protection_915_1024_4748.

⁸⁴ LFIP Art. 95(2).

⁸⁵ Directorate General of Migration Management, *2015 Türkiye Göç Raporu*, April 2016, available at http://www.goc.gov.tr/files/files/_2015_g%C3%B6%C3%A7_y%C4%B1l%C4%B1k_rapor_18_04_16.pdf, p. 79; RRT Report, December 2015, p. 76.

⁸⁶ TPR Art. 24(2).

⁸⁷ Government of Turkey, Disaster and Emergency Management Authority (AFAD), *Syrian Refugees in Turkey: 2013 Field Survey Results*, 2014, available at https://www.afad.gov.tr/Dokuman/TR/61-2013123015505-syrian-refugees-in-turkey-2013_print_12.11.2013_eng.pdf, p. 9, 36.

⁸⁸ Türk Tabipleri Birliği, *Suriyeli Sığınmacılar ve Sağlık Hizmetleri Raporu Açıklandı*, 2014, available at <http://www.ttb.org.tr/kutuphane/siginmacirpr.pdf>, p. 39-42.

⁸⁹ Field survey shared with Amnesty International on a confidential basis, March 2016.

well as the general inadequacies in the economic and social conditions of migrants, asylum-seekers and refugees.⁹⁰

Amnesty International's field research also found that asylum-seekers and refugees from a range of countries, residing in different parts of Turkey, are living in very poor conditions.

In the southern border provinces, Amnesty International visited Syrian refugees living in appalling situations. For example, in Gaziantep researchers met a family of seven from Aleppo who were living in just two rooms, without electricity or running water. Both of the rooms were damp and cold, and one was underground.⁹¹ In Hatay, two brothers from Hama, aged 20 and 16, were living along with two men in a single room with a concrete floor, a window missing, with no running water. They said the total monthly rent and bills for the room was 300 Turkish Lira (about 100 USD).⁹²

Living conditions were also very poor in Istanbul. Researchers interviewed nine men⁹³ from Afghanistan and Pakistan (aged 18-30), who collected recyclable materials from garbage bins around the city – which they later sold – and who lived in uninhabitable conditions. Some of these men lived in a building housing 15 Afghan and Pakistani men. It was a cold, damp and uninsulated building with holes in the floors, walls, and windows. Five people slept in each of the three bedrooms, which contained only mattresses and blankets. The only heating source was a small woodstove. Another place visited by researchers was an unhygienic and airless room containing about 12 bunkbeds. Amnesty International interviewed three of the residents, who were men from Afghanistan. Below the room was an industrial operation, where the recyclable materials that they had collected from the garbage were weighed and sorted. Also in Istanbul, Amnesty International researchers saw the place where a 52-year Afghan civil engineer from Baghlan Province occasionally lives along with a number of other men; it was a small, unhygienic textile workshop in a basement. He told researchers that when he cannot afford to pay rent he must sleep in public places such as mosques, parks and metro stations.⁹⁴ Researchers also interviewed an elderly Iraqi couple (the man aged 74, the woman aged 65) from Mosul, who were living in one small and partly underground room; two single beds, a table, and a refrigerator occupied virtually the entire space.⁹⁵

For Syrian and non-Syrian asylum-seekers and refugees, social assistance – which would enable particularly vulnerable people to meet their basic needs such as shelter – is inadequate in both law and practice. The Turkish asylum system does not guarantee a right to a minimum level of support, but rather grants discretion to relevant authorities to provide social assistance and services to Syrians under Temporary Protection,⁹⁶ as well as to non-Syrian International Protection applicants and beneficiaries.⁹⁷ These social assistance provisions are not only weak and limited; according to Refugee Rights Turkey, they are unevenly implemented, or sometimes completely unimplemented.⁹⁸ Government agencies at the provincial level do not have the resources to meet the subsistence needs of all International Protection applicants in their areas, and the influx of Syrians under Temporary Protection has put these agencies under further strain.⁹⁹ For example, in a survey of over 10,000 Syrian refugees in Sultanbeyli, a working class suburb of Istanbul, not a single person said they received any financial assistance from the state.¹⁰⁰

⁹⁰ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Turkey*, 11 January 2016, UN Doc. CERD/C/TUR/CO/4-6.para. 11, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/003/50/PDF/G1600350.pdf> paras. 33, 35.

⁹¹ Gaziantep interview, 25 March 2016.

⁹² Hatay interview, 23 March 2016.

⁹³ Unless otherwise indicated, all information from this paragraph derives from Istanbul interviews, 16 March 2016.

⁹⁴ Istanbul interview, 14 March 2016.

⁹⁵ Istanbul interview, 20 March 2016.

⁹⁶ TPR Art. 30.

⁹⁷ LFIP Arts. 89(2), 89(5).

⁹⁸ RRT Report, December 2015, p. 73-74.

⁹⁹ RRT Report, December 2015, p. 74.

¹⁰⁰ Sultanbeyli City Council, "Syrian (Family): Survey Report: Survey Report," November 2015, p. 26.

In Amnesty International's field research, the only financial assistance reported by 56 of the 57 asylum-seekers and refugees with whom researchers spoke consisted of charity from family members, fellow asylum-seekers, or religious communities. Many of the people Amnesty International met had suffered horrendous situations before arriving, often destitute, in Turkey. For example, researchers interviewed two Afghan families whose three young children had recently drowned when they had tried to reach Greece on 31 October 2015. Researchers saw the death certificates of the children – Farah, a five-year old girl, and two boys, Yusuf aged four and Yunus aged two – as well as photographs of the bodies and their burial. Haji Shafi, the father of the two boys, told Amnesty International: “After the accident we came to Istanbul, and slept under a bridge by the sea.” He said another Afghan man found them and were allowing the two families to stay in his flat; apart from this man, he said, “We don't get any help from anyone or any organization.”¹⁰¹

A 41-year old widow from Baghdad with three children (a boy aged six and two daughters aged 11 and 14) said she survives on charity from her family in Australia and Canada, as well as from a local church in Istanbul. The family lives in two damp and cold rooms, which cost 900 Turkish Lira (about 320 USD) per month. Without the support from her family and church, she told researchers she did not know what she would do, and that she might return to Iraq.¹⁰² The elderly Iraqi couple mentioned previously said their son in Germany paid their monthly rent of 500-550 Turkish Lira (175-190 USD), and they received cash support from a local Christian charity, which enabled them to survive.¹⁰³ In Gaziantep, a 26-year old Syrian mother of three children (boys aged nine, six, and two), told Amnesty International that a local restaurant frequently gives bread to her family.¹⁰⁴

Only one of the 57 asylum-seekers and refugees interviewed for this research received consistent state support for housing. This was a transgender Iranian woman, “Ruth,”¹⁰⁵ living in Denizli, which is one of the “satellite cities” where International Protection applicants are required to live. The 28-year old from Markazi Province had arrived in Turkey 19 months previously, and had been in Denizli for 18 months. She said that she experienced serious discrimination from employers and landlords, and was unable to find a place to live or work to support herself. She told researchers: “I had a plan to work but it's impossible.” Violence and systematic harassment and discrimination against LGBT people – particularly transgender women – are well-documented in Turkey.¹⁰⁶ Ruth said that after 14 months of asking for support from the local *Sosyal Yardımlaşma ve Dayanışma Vakfı* (the Social Assistance and Solidarity Foundation, under the authority of the Ministry of Family and Social Policy), she obtained a free room in a hostel. She described her accommodation as noisy, cold, and dirty. She has no privacy and the landlord of the hostel can enter her room without her permission. There is no door on the bathroom, and it is a stressful environment, with the police paying frequent visits to the building.

Local civil society organizations and international agencies have neither the mandate nor the capacity to bridge the gap left by the state authorities in order to fulfil the housing needs of the country's asylum-seekers and refugees. The staff at one NGO that is an implementing partner of UNHCR, and which works with Syrians and non-Syrians, told Amnesty International: “The housing support we provide is negligible: at most one or two weeks in a hotel, for one or two people per month.”¹⁰⁷ A staff member of another of UNHCR's implementing partners said that in one large city, the organization was only helping a single individual with housing.¹⁰⁸ Some refugee

¹⁰¹ Istanbul interview, 15 March 2016. The families asked Amnesty International to use their real names.

¹⁰² Istanbul interview, 20 March 2016.

¹⁰³ Istanbul interview, 20 March 2016.

¹⁰⁴ Gaziantep interview, 25 March 2016.

¹⁰⁵ Unless otherwise indicated, all information for this paragraph derives from Denizli interview, 17 March 2016.

¹⁰⁶ See for instance Amnesty International, “*Not an Illness nor a Crime*”: Lesbian, Gay, Bisexual and Transgender People in Turkey Demand Equality, AI Index EUR 44/001/2011, 21 June 2011, available at <https://www.amnesty.org/en/documents/EUR44/001/2011/en/>.

¹⁰⁷ Details withheld for confidentiality reasons.

¹⁰⁸ Details withheld for confidentiality reasons.

NGOs said that they occasionally provided *ad hoc* assistance in finding accommodation, or in meeting rent payments.¹⁰⁹

In at least one respect the EU-Turkey Deal appears to have exacerbated the inadequacy of accommodation for asylum-seekers and refugees in Turkey. Although Turkey, prior to the deal, been building six Reception and Accommodation Centres for 4,500 people, with EU funding, in the context of the negotiations for the October 2015 Joint Action Plan, the Turkish authorities and EU officials agreed to convert five of these six facilities into detention facilities,¹¹⁰ which are called “removal centres” (*geri gönderme merkez*) in the Turkish asylum system. Consequently, instead of providing accommodation to asylum-seekers and refugees, these EU-funded centres will be used detain a range of people, including those who have been apprehended trying to leave Turkey irregularly.

By April 2016 three of the five removal centres had reportedly been put into service.¹¹¹ DGMM anticipates that by June 2016 it will be operating 25 removal centres in the country with a total capacity of 14,060 detainees.¹¹² The sixth of the facilities that the EU and Turkey had been building, which is the only one intended to be kept as a place of accommodation rather than detention, is in Erzurum province. In late 2015 Amnesty International documented abuses at this EU-funded facility, including arbitrary detention, ill-treatment, as well as people being returned to Syria where they faced a risk of serious human rights violations.¹¹³ In May 2016, the European Commission announced that two new facilities – in Ankara and Konya – were being planned.¹¹⁴

The two new facilities – even when built – will come nowhere close to meeting the accommodation needs of Turkey’s asylum-seeker and refugee population. Even those who can afford to pay rent face the reality that Turkey’s housing stock was already limited. And although the EU is providing billions of Euros as part of the EU-Turkey Deal, these funds are not enough to address a major, pre-existing, infrastructure problem. Turkey is not planning, as far as Amnesty International is aware, to use EU funds to build substantial new housing. Nor is it clear whether or how Turkey will use EU funds to provide people with financial support to pay for accommodation. What is clear is that the EU entered into a deal with Turkey where the EU knew the accommodation situation was dire, and exacerbated an acute housing shortage by converting the very few public housing facilities for asylum-seekers and refugees into places of detention.

5.2 BARRIERS TO ACHIEVING SELF-RELIANCE

Even though the Turkish authorities are unable to fulfil the basic needs of the asylum-seekers and refugees on their territory, neither do they permit most of these people to meet their own needs through lawful wage-earning employment.

Under the *Law on Foreigners and International Protection*, two categories of people have an automatic right to work: “refugees” (i.e. Europeans) and “subsidiary protection beneficiaries,”¹¹⁵

¹⁰⁹ Istanbul interview, 14 March 2015; Hatay interview, 22 March 2016.

¹¹⁰ Republic of Turkey, *Initial Report to the Committee on the Protection of the Rights of Migrant Workers*, UN Doc. CMW/C/TUR/1, 29 April 2016, available at http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/TUR/CMW_C_TUR_1_6922_E.pdf, para. 54.

¹¹¹ Republic of Turkey, *Initial Report to the Committee on the Protection of the Rights of Migrant Workers*, UN Doc. CMW/C/TUR/1, 29 April 2016, available at http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/TUR/CMW_C_TUR_1_6922_E.pdf, para. 54.

¹¹² European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 20.

¹¹³ Amnesty International, *Europe’s Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey*, AI Index EUR 44/3022/2015, 16 December 2015, available at <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>.

¹¹⁴ European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalisation Roadmap*, 4 May 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/third_progress_report_on_turkey_visa_liberalisation_roadmap_en.pdf, p. 16.

¹¹⁵ LFIP Art. 89(4)(b).

although other laws and regulations regarding the employment of foreigners may constrain the scope of this right. For instance, foreigners are prohibited from practising certain professions, including dentist, nurse, midwife, pharmacist and lawyer.¹¹⁶

Under Turkish law, access to the labour market is much more limited for other asylum-seekers and refugees in the country. With respect to non-Syrians, the *Law on Foreigners and International Protection* asserts that International Protection applicants and “conditional refugees” (i.e. non-Europeans) may apply for a work permit six months after they lodge their claims.¹¹⁷ As for Syrian refugees, the *Law on Foreigners and International Protection* makes no mention of Temporary Protection beneficiaries having the right to work. And although the October 2014 *Temporary Protection Regulation* contains a provision on Syrians’ access to the labour market, it states that the principles and procedures regarding this access would be determined later by the Council of Ministers.¹¹⁸ Nonetheless, some Syrian refugees had been able to access the labour market under a 2003 law under which they were treated like other legally resident foreign nationals in the country.¹¹⁹

Two regulations passed in 2016, which are frequently – and erroneously – described by Turkish and EU officials as “granting the right to work,” may have somewhat clarified and facilitated Syrians’ and non-Syrians’ access to the labour market. Since 15 January 2016, registered Syrian refugees who have been in Turkey for more than six months are eligible to apply for work permits in the province where they had first registered for Temporary Protection, although the proportion of refugees and asylum-seekers cannot exceed 10% of a company’s workforce, and each individual’s work permit is tied to a single place of employment.¹²⁰ A similar regulation for International Protection applicants was passed on 26 April 2016.¹²¹ For both Syrians and non-Syrians, it is their prospective employer who is responsible for submitting applications for work permits to the Ministry of Labor and Social Security. At the time of publication of this briefing in late May 2016, it was premature to assess to what extent these regulations will expand access to the labour market for asylum-seekers and refugees.

At the moment, the limited statistics that are available indicate that very few asylum-seekers and refugees from any countries have the legal right to work in Turkey. According to the Turkish authorities, between 2012 and February 2016, 7,500 Syrian refugees (out of a population that had reached over 2.7 million by 2016) had received work permits.¹²² In 2015, there were a total of 3,822 Syrian refugees with the legal right to work in the country.¹²³ This represents just over 0.1% of Turkey’s current Syrian population. According to the European Commission, as of 20 February 2016, only 15 applications for Syrian work permits had been submitted under the new procedure instituted in January, but the number of successful applications was not reported.¹²⁴ The figure had risen to 2,000 by late March 2016, according to figures provided to aid groups by DGMM, but the number of decisions made – either positive or negative – was still not disclosed.¹²⁵

¹¹⁶ Refugee Rights Turkey, “Access to Labor Market for Syrian Refugees and Other Persons under ‘Temporary Protection’,” February 2016, available at http://mhd.org.tr/assets/tp_work_en.pdf.

¹¹⁷ LFIP Art. 89(4)(a).

¹¹⁸ TPR Art. 29.

¹¹⁹ Republic of Turkey, *Yabancıların Çalışma İzinleri Hakkında Kanun*, Resmî Gazete 4817, 27 February 2003, available at <http://www.resmigazete.gov.tr/eskiler/2003/03/20030306.htm#5>.

¹²⁰ Republic of Turkey, *Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik*, Resmî Gazete 8375, 15 January 2016, available at <http://www.resmigazete.gov.tr/eskiler/2016/01/20160115-23.pdf>.

¹²¹ Republic of Turkey, *Uluslararası Koruma Başvuru Sahibi ve Uluslararası Koruma Statüsü Sahibi Kişilerin Çalışmasına Dair Yönetmelik*, Resmî Gazete 29695, 26 April 2016, available at <http://www.resmigazete.gov.tr/eskiler/2016/04/20160426-1.htm>.

¹²² Republic of Turkey, Çalışma ve Sosyal Güvenlik Bakanlığı (Ministry of Labor and Social Security), “Geçici Korumadaki Yabancılar Çalışma Hakkı Yasallaşıyor,” 6 February 2016, available at <http://www.csgeb.gov.tr/home/news/gecici-korumadaki-yabancilara-calisma-hakki-yasallasiyor/>.

¹²³ Directorate General of Migration Management, *2015 Türkiye Göç Raporu*, April 2016, available at http://www.goc.gov.tr/files/files/_2015_g%C3%B6%C3%A7_y%C4%B1l%C4%B1k_rapor_18_04_16.pdf, p. 54-55.

¹²⁴ European Commission, *EU-Turkey Joint Action Plan - Third Implementation Report*, 4 March 2016, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/implementation_report_20160304_eu-turkey_joint_action_plan_en.pdf, p. 5.

¹²⁵ Cited in Patrick Kingsley, “Fewer than 0.1% of Syrians in Turkey in Line for Work Permits,” *The Guardian*, 11 April 2016, available at <http://www.theguardian.com/world/2016/apr/11/fewer-than-01-of-syrians-in-turkey-in-line-for-work-permits>.

As far as Amnesty International is aware, the Turkish authorities have not released any data on the number of non-Syrian asylum-seekers and refugees with access to the labour market. Refugee Rights Turkey reported in late 2015 that the vast majority of them did not have access to legal employment.¹²⁶

Although the Turkish authorities do not release data on these matters, it is likely that the legal and practical challenges associated with working in the formal economy mean that most of the country's 3 million asylum-seekers and refugees need to support themselves and their families through informal work. In early 2016, the unemployment rate in Turkey stood at almost 11%,¹²⁷ making the absorption of large numbers of refugees into the formal economy unlikely.

Most asylum-seekers and refugees are working in the informal economy, where they are at risk of unfair or exploitative working conditions. UN agencies report that Syrian refugees in Turkey are "often subject to exploitation, discrimination and harassment."¹²⁸ Non-Syrian asylum-seekers and refugees who work informally are likely to also be vulnerable to exploitation. Nine men¹²⁹ from Afghanistan and Pakistan (aged 18-30), whom Amnesty International researchers met in Istanbul, as discussed earlier, earned money by selling recyclable materials they collected from garbage bins around the city. One of the men, a 22-year old from Pakistan, told researchers that he worked 10-12 hours per day; for each 100 kg he brings in, he is given 20 Turkish Lira (about 7 USD). Another, "Ramin," a 25-year old man from Kabul, told Amnesty International researchers that he had been part of a group of 11 Afghan men working in a factory, and that they were not paid for three months. They wanted to lodge a complaint with the police, but were nervous to do so because most did not have passports. According to Ramin, one of the men in their group had an Italian passport; when this man complained to the police about their unpaid wages, the police threatened to deport the entire group of 11 to Afghanistan because they had entered Turkey irregularly. In the end, Ramin explained to Amnesty International, the police told the group of 11 to clean up a local park, but did not take action to deport them.

Children needing to work to meet the basic needs of their families is a widespread problem, despite this being contrary to Turkey's domestic and international legal obligations.¹³⁰ UN agencies report that among Syrian refugees in the country, "child labour is a common phenomenon."¹³¹ In a 2015 survey of over 700 Syrian refugees in Istanbul, the most common reasons for children's non-enrolment in school were that the children needed to work to support the family (26.6%) and that the family could not afford the school fees (20.3%).¹³² A Syrian mother of three boys, living in Gaziantep, told Amnesty International that the shrapnel injuries her husband sustained in Syria prevent him from working, and that the entire family of seven survives on the 5-10 Turkish Lira per day (about 1.75 to 3.50 USD) that her nine-year old son earns working at a grocery store.¹³³ An Iraqi man from Dohuk, living in Istanbul, said that his three children – a daughter aged 18 and two sons aged 17 and 16 – cannot attend school but must work instead. He said: "They must work; otherwise we cannot survive." The 18-year old daughter told Amnesty International that she and her brothers work in a textile factory five days a week, from 8 a.m. until 7:30 p.m., and each make 250 Turkish Lira (about 88 USD) per week. The

¹²⁶ RRT Report, December 2015, p. 84.

¹²⁷ Turkish Statistical Institute, "Labour Force Statistics," February 2016, available at <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=21577>.

¹²⁸ Regional Refugee and Resilience Plan, *Regional Refugee and Resilience Plan 2016-2017 in Response to the Syria Crisis – Turkey*, 2015, available at <http://www.3rpsyriacrisis.org/wp-content/uploads/2016/02/Turkey-2016-Regional-Refugee-Resilience-Plan.pdf>, p. 70.

¹²⁹ Unless otherwise indicated, all information from this paragraph derives from Istanbul interviews, 16 March 2016.

¹³⁰ Republic of Turkey, *Constitution of the Republic of Turkey*, 1982, available at http://global.tbmm.gov.tr/docs/constitution_en.pdf, Art. 50; UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Turkey*, UN Doc. CRC/C/TUR/CO/2-3, 20 July 2012, available at www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_TUR_CO_2-3.pdf, para. 62; *Convention on the Rights of the Child*, UNTS, vol. 1577, 20 November 1989, Art. 32; International Labour Organization, *Minimum Age Convention, C138*, 26 June 1973, C138, available at <http://www.refworld.org/docid/421216a34.html>.

¹³¹ Regional Refugee and Resilience Plan, *Regional Refugee and Resilience Plan 2016-2017 in Response to the Syria Crisis – Turkey*, 2015, available at <http://www.3rpsyriacrisis.org/wp-content/uploads/2016/02/Turkey-2016-Regional-Refugee-Resilience-Plan.pdf>, p. 70.

¹³² Field survey shared with Amnesty International on a confidential basis, March 2016.

¹³³ Gaziantep interview, 25 March 2016.

father said that he was unable to find a job that did not require very long hours, which he is unable to do because he says he is old and tires easily.¹³⁴

5.3 THE CASE OF SULTANBEYLİ MUNICIPALITY: AN EXAMPLE OF WHAT CAN BE DONE

The response of one municipality in Istanbul – Sultanbeyli¹³⁵ – to refugees suggests that despite the enormous challenges posed by operating in the context of a new and overwhelmed asylum system, local authorities could do more to assess and meet people's basic needs.

Sultanbeyli is a working class suburb of Istanbul. Over the last 30 years, the population has increased nearly a hundredfold – from 3,600 in 1985 to 321,730 in 2015. This rapid urbanization has been accompanied by an influx of asylum-seekers; in 2015, the municipality hosted 17,330 Syrian refugees as well as approximately 1,000 asylum-seekers and refugees from other countries.

Over the past few years, the municipality has developed a unique approach to the asylum-seekers and refugees within its jurisdiction. In 2014, it founded Mülteçider: Refugees and Asylum Seekers Assistance and Solidarity Association, which is a municipality-led initiative that works in partnership with public institutions as well as NGOs. Mülteçider aims to provide a wide range of services to Syrians and non-Syrians, including healthcare, education, rent subsidies, psychosocial care, legal information, as well as a four-flat shelter providing free accommodation to particularly vulnerable women and children. The organization also provides in-kind aid, such as stoves, blankets, food, and winter clothing. Mülteçider has developed a secure online database that, according to municipality officials, tracks all 17,330 Syrian refugees in Sultanbeyli. Staff members showed Amnesty International the database, which in addition to recording basic demographic information, also monitors vulnerability criteria (with a ranking system from 1-100), as well as the aid provided to families and the needs that remain outstanding. According to municipality staff, regular house visits by Mülteçider employees and volunteers enable the database to be continuously updated.

Mehmet Aktaş, the Institutional Relations and Project Coordinator at Mülteçider, told Amnesty International: “The core of Mülteçider is something coming out of humanity. What we've done, in coordination with NGOs – we want to show this model to others. There is no other system like this, either in Turkey or in Europe. This is a poor neighbourhood – it is disadvantaged. So if Sultanbeyli can do this, anyone in Turkey or elsewhere can do this.”

Local institutions and communities like Sultanbeyli are often at the frontline of response efforts to the refugee crisis in Turkey.¹³⁶ In 2015, municipalities reported that the Syrian refugee crisis has placed a strain on their physical infrastructure (such as water, electricity and waste management), as well as on social services infrastructure.¹³⁷ Although the central role of municipalities in addressing the needs of asylum-seekers and refugees has to date not

¹³⁴ Istanbul interview, 20 March 2016.

¹³⁵ Unless otherwise indicated, all information in the boxed text derives from Istanbul interview, 15 March 2016; the organization's website (<http://www.multeçider.com/>); and several 2016 PowerPoint presentations provided to Amnesty International by the municipality. Sultanbeyli's “Mülteçider” is not to be confused with the Izmir-based NGO Mülteci-Der (<http://www.multeci.org.tr/>).

¹³⁶ Holly Welborn Benner, Arzu Uraz, Joanna Peace De Berry and William David Wiseman, *Turkey's Response to the Syrian Refugee Crisis and the Road Ahead*, World Bank Group, December 2015, available at <http://documents.worldbank.org/curated/en/2015/12/25703870/turkey's-response-syrian-refugee-crisis-road-ahead>, p. 11. Also see United Cities and Local Governments, *Municipalities on the Frontline: The Effects of the Syrian Crisis on Local Government in Bordering Countries (Turkey, Jordan, Lebanon)*, May 2013, available at http://www.uclg.org/sites/default/files/Final%20-%20Report%20municipalities%20on%20the%20frontline%20version%20230513_1.pdf.

¹³⁷ Field study shared with Amnesty International on a confidential basis, March 2016.

received the attention it deserves, they are starting to be recognized as key actors. They are cited several times as partners in the UN's 2016-2017 Refugee and Resilience Regional Plan for Syrian Refugees, which identifies one priority as supporting municipalities in providing essential services.¹³⁸

¹³⁸ Regional Refugee and Resilience Plan, *Regional Refugee and Resilience Plan 2016-2017 in Response to the Syria Crisis – Turkey*, 2015, available at <http://www.3rpsyriacrisis.org/wp-content/uploads/2016/02/Turkey-2016-Regional-Refugee-Resilience-Plan.pdf>, p. 72.

6. RECOMMENDATIONS

EU AND EU MEMBER STATES

- Immediately halt the return of asylum-seekers and refugees to Turkey on the grounds that it is a “safe third country” or a “first country of asylum;”
- Provide significant funding to Turkey towards meeting the basic needs of Syrian and non-Syrian asylum-seekers and refugees, as well as host communities;
- Accelerate the establishment of an ambitious Voluntary Humanitarian Admission Scheme for refugees in Turkey;

GOVERNMENT OF TURKEY

- Lift the geographical limitation to the *Refugee Convention*;
- Regularly provide public and comprehensive data on asylum matters, including information about Temporary Protection and International Protection applicants and beneficiaries, as well as about these populations’ living conditions and access to the labour market;
- Ensure that asylum-seekers and refugees in Turkey are given access to means of subsistence in order to maintain an adequate standard of living – either through state support or by means of self-reliance;
- Develop and implement a national housing strategy, taking into account the needs of particularly vulnerable groups including asylum-seekers and refugees;
- Foster partnerships with municipalities to enable them to support asylum-seekers and refugees as well as local host communities;
- Consider extending group-based protection for people from known refugee-producing countries, in particular Afghanistan and Iraq, and exempt them from submitting International Protection applications;

INTERNATIONAL COMMUNITY

- Significantly expand resettlement and other pathways of admission, including private sponsorships and family reunification, for both Syrians and non-Syrians in Turkey;
- Devote sufficient human and financial resources to ensure the timely processing of applications for resettlement and other pathways out of Turkey;

- Guarantee full, flexible and predictable funding (over and above existing assistance), for local inclusion and self-reliance initiatives benefiting refugees – both Syrians and non-Syrians – and their host communities in Turkey;
- Guarantee full, flexible and predictable funding (over and above existing assistance), for refugee protection and assistance in Turkey;

DONORS AND INTERNATIONAL NGOS

- Foster partnerships with municipalities to enable them to support asylum-seekers and refugees as well as local host communities.

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NO SAFE REFUGE

ASYLUM-SEEKERS AND REFUGEES DENIED EFFECTIVE PROTECTION IN TURKEY

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