

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 35th Session

TURKEY

I. BACKGROUND INFORMATION

Turkey is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Turkey ratified the two instruments with declarations that limit the geographical scope of application of the *1951 Convention*. Turkey acceded to the *1954 Convention relating to the Status of Stateless Persons* in 2015. Turkey is not Party to the *1961 Convention on the Reduction of Statelessness*. Turkey had pledged to accede to the Statelessness Conventions during the 2011 Ministerial Meeting.

Turkey is home to the largest refugee population in the world. At the end of July 2019, according to the Directorate General for Migration Management (DGMM) statistics, there were over 3.6 million Syrians under temporary protection in Turkey. Almost half of the Syrian refugee population in Turkey are children. Only around three per cent of Syrians live in the 11 official Temporary Accommodation Centres (TACs) while 97 per cent reside among the host community in urban, peri-urban and rural areas. The majority of Syrians under temporary protection live in the South-eastern part of Turkey. However, substantial populations are also found in large cities of Turkey such as Istanbul, Izmir and Ankara.

370,932 refugees and asylum-seekers of other nationalities were registered by UNHCR as of September 2018. The majority come from Afghanistan (46.2%) and Iraq (38.5%), followed by Iran (10.6%), Somalia (1.6%) and other nationalities (3.1%). For 2018, DGMM reported registering 114,540 new international protection applications from Iraq (60%), Afghanistan (33%), Iran (4%), Somalia (2%) and other nationalities (2%), a slight increase compared to the 112,415 applications of 2017.

In 2018, six Temporary Accommodation Centres were either consolidated or closed down and the population residing in these centres assisted to relocate to urban locations or to other centres according to their choice. The majority have opted to settle in host communities and staying in provinces where their Temporary Accommodation Centres were located.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 2nd cycle UPR recommendation no. 148.12: "Adopt the Act on the Prevention of Human Trafficking and Protection of Victims" (Kyrgyzstan)

Turkey ratified the *Council of Europe's Convention on Action against Trafficking in Human Beings* in January 2016. With its focus on the protection of victims and safeguarding of their

rights, as well as its regulatory framework on prevention of trafficking, the *Convention* has influenced the drafting process of the *Regulation on Combatting Human Trafficking and Protection of Victims* in Turkey.

The *Regulation on Combatting Human Trafficking and Protection of Victims* was issued in March 2016 by DGMM to define the preventive and response mechanisms in a coordinated manner among national institutions. The *Regulation*, pursuant to the relevant articles of the *Law on Foreigners and International Protection*, sets forth issuance of temporary residence permit for victims, and for persons for whom there are substantial reasons to believe that they might be victims of trafficking. A residence permit is initially issued for 30 days (renewable up to 3 years) to enable the person to access relief from the impact of the negative experience and reflect on whether to cooperate with the competent authorities. In view of the security risks and protection needs of victims, the *Regulation* provides access to shelters and referral to provinces other than the residence province and ensures supervision by law enforcement in case of evaluation of such need. Victims support programs, incorporating services such as medical and psychosocial support, legal assistance, social assistance and vocational courses, are also detailed in the *Regulation* where the victims' access to health and legal assistance free of charge under the relevant provisions of various legislation are regulated. Additionally, victims' right to benefit from witness protection measures if they decide to take part in criminal investigation concerning the perpetrators was set forth in the *Regulation*. Victims of human trafficking can benefit from support services to be provided in Turkey upon their consent or can return to their home countries if they choose so on a voluntary basis.

The first evaluation mission was carried out by a delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) in October 2018 in accordance with the independent monitoring mechanism set up under the Council of Europe's Convention on Action against Trafficking in Human Beings.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Protection of asylum-seeking women and girls, and LGBTI individuals

Linked to 2nd cycle UPR recommendation no. 148.102: "Pursue the implementation of effective measures to protect women and children against domestic violence and ill-treatment in all its forms" (Luxembourg)

Turkey is a party to the *Council of Europe Convention on preventing and combating violence against women and domestic violence*, and adopted the *Law no. 6284 on Protection of Family and Prevention of Violence against Women* in March, 2012. While the preventive and protective measures foreseen by the *Law no. 6284* are also applicable to refugee women, the implementation of the *Law* has not been fully effective in this respect, including due to language barriers. The third National Action Plan on Combating Violence against Women, covering the period of 2016-2020 does not specifically reference refugee women.

The national legislative framework of Turkey does not make explicit reference to LGBTI. While the scope of discriminatory actions that constitute hate crimes under Article 122 of the Turkish Penal Code was amended, the law still lacks an explicit reference to crimes relating to sexual orientation and gender identity.

Refugee women, girls, and LGBTI individuals are often not informed of the preventive mechanisms and referral pathways, and remain cautious to approach authorities.

Underreporting is mainly related to a lack of information and awareness and cultural reasons, and a lack of trust towards effectiveness of existing remedies and available services also play a role. Women may also be dissuaded from reaching out to the authorities because women's shelters do not usually allow survivors to stay with their sons older than 12 years old and their children with disabilities. In case their children are not placed due to these reasons in the same facility, they are placed in child institutions and respective centres proximate to the shelter where their mother is placed.

Informal, forced, and early marriages continue to be observed among the refugee population, particularly among Syrian, Iraqi and Afghan communities. Unequal gender and power relations within the community affect women and girls adversely; as a result, informal, early and forced forms of marriages appear as a part of negative coping mechanisms that are considered as a means to reduce the financial burden on families, or as a protection mechanism for children from potential sexual harassment and abuse.

Furthermore, LGBTI individuals may face a significant level of discrimination and social isolation due to their sexual orientation and gender identity, and may be subjected to sexual harassment, physical and sexual violence, and forced marriages underpinned by the presumption that their sexual orientation could then be altered. They are often deprived of the social networks and support that they need as a result of displacement, and encounter additional threats from their own communities on the basis of constituting a fallacious image of their respective refugee communities, and degrading the honour of the family.

Recommendations:

UNHCR recommends that the Government of Turkey:

- (a) Strengthen identification mechanisms for early detection of protection risks refugee women and girls encounter upon arrival to the country and during their stay. For this purpose, ensure staff of law enforcement, social services and migration management authorities are trained on the same referral procedures and work in cooperation.
- (b) Reinforce referral pathways in enabling refugee women to have access to shelters, medical, legal and psychosocial services as well as income generating activities.
- (c) Increase the number of shelters to meet safe accommodation needs of women and girls in the short term, while also engaging in empowerment activities at shelters to rehabilitate and promote self-sustainability of survivors.
- (d) Ensure shelters are equipped with interpreters, psychologists, and rooms ensuring personal privacy.
- (e) Establish shelters with a household system to be able to serve for different groups of survivors including child survivors, LGBTI survivors, and women who wish to keep their children in the shelter.
- (f) Ensure available helplines are supported with services in several languages and efficient follow-up of complaints received;
- (g) Develop the necessary protection mechanisms, including laws and regulations for groups, such as LGBTI individuals.

Additional protection challenges

Issue 2: Compliance with non-refoulement principle

Law no. 6458 on Foreigners and International Protection incorporates not only the standards in Article 33 of the *1951 Convention*, but also the provisions in Article 3 of the *European Convention on Human Rights*. Thus, *Law 6458* prevents the removal of individuals to places (a) where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion, and (b) where they would be subjected to torture, inhuman or degrading punishment or treatment. Article 55 of the said

Law further stipulates that a deportation order cannot be issued for foreigners who may face the risk of torture, inhuman and degrading treatment or punishment upon deportation to another country. The identification process of persons who may be exposed to such risk remains challenging given the unprecedented numbers of foreigners the migration authorities have to respond to.

In October 2016, the statutory decree of the Council of Ministers (KHK 676¹) introduced amendments to three articles of the *Law 6458*, namely Article 53 (issuance of deportation decision), Article 54 (persons subject to deportation decision) and Article 98 (obligations of carriers). The suspensive effect of the appeals regulated in Article 53(3) of the *Law 6458*, pursuant to which the execution of the deportation order was suspended until the finalization of the judgment in case of appeal to the Administrative Court, was also amended by the introduction of an exception clause stating that “without prejudice to the foreigner's consent, the foreigner shall not be deported during the judicial appeal period or until after the finalization of the appeal proceedings *except those within the scope of sub-paragraphs (b), (d) and (k) of the first paragraph and second paragraph of Article 54.*

Thus, with the introduction of the statutory decree no. 676, the *ex officio* suspension effect of application to Court has been removed allowing for deportation orders to be issued for asylum-seekers and refugees if they are considered to be a threat to public order and public security, or having associations with terrorist organisations. As a result of this amendment, in cases, in which an applicant or a status-holder is assessed to fall under one of these categories, a deportation order may be issued at any stage of the procedures. Only the Constitutional Court has the authority to suspend deportation in such cases, by issuing interim measures for cases which are assessed to face the risk of ‘irreparable harm’ upon deportation to the country of origin.

Recommendations:

UNHCR recommends that the Government of Turkey:

- (a) Strengthen access to legal assistance by foreigners at border and removal centres.
- (b) Provide adequate resources, including interpreters, at border and removal centres.
- (c) Review the amendments introduced to the *Law of Foreigners and International Protection*.

UNHCR
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¹ Issued on O.J. no. 29872, dated 29 October 2016.