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REFUGEES IN TURKEY DENIED PROTECTION



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INTERNATIONAL**



Amnesty International Publications

First published in 2009 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

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Index: EUR 44/001/2009
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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Cover photo: Two Somali children carrying water in Sarayköy, a suburb of Ankara, 2006. The photograph was taken by a Somali child refugee as part of a project called “Integrating Art into the Community”, run by the Association for Solidarity with Asylum-Seekers and Migrants. Refugee children in Ankara took photographs to reflect their daily lives, living conditions, hopes and fears.

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GLOSSARY

CAT Committee against Torture
Convention against Torture: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
CRC Committee on the Rights of the Child
Children's Convention: Convention on the Rights of the Child (1989)
ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR European Court of Human Rights
EXCOM UNHCR Executive Committee
EU European Union
HCA Helsinki Citizens Assembly Turkey
HRC UN Human Rights Committee
HRW Human Rights Watch
ICCPR International Covenant on Civil and Political Rights (1966)
ICERD International Convention on the Elimination of All Forms of Racial Discrimination (1965)
ICESCR International Covenant on Economic, Social and Cultural Rights (1966)
ILO International Labour Organization
IOM International Organization for Migration
MOI Ministry of the Interior
OAU Organization of African Unity
OPCAT Optional Protocol to the Convention against Torture
Refugee Convention: Convention relating to the Status of Refugees (1951)
RSD Refugee Status Determination
1967 Protocol: Protocol relating to the Status of Refugees (1967)
UDHR Universal Declaration of Human Rights (1948)
UNHCR UN High Commissioner for Refugees
OHCHR UN Office of the High Commissioner for Human Rights
WGAD UN Working Group on Arbitrary Detention

DEFINITIONS

WHO IS A REFUGEE?

Under international law the term "refugee" refers to any person who is outside their country of origin¹ and who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"² and is therefore unable or unwilling to return to that country. The legal regime that applies to such people includes the 1951 Convention relating to the Status of Refugees (the Refugee Convention) and its 1967 Protocol, in addition to a number of international and regional human rights treaties. The legal framework for refugees recognizes that they have special international protection needs due to the fact that their country of origin will not protect their human rights. While refugees are, therefore, distinct from migrants, they often travel alongside migrants, using the same travel routes or smuggling channels, and often face similar violations of their human rights in transit or destination countries.

THE REFUGEE CONVENTION AND ITS TEMPORAL AND GEOGRAPHICAL LIMITATIONS

The above definition of the term "refugee" is found in Article 1. A. of the Refugee Convention. However, in the original wording of the Convention prior to the 1967 Protocol, ratifying states were provided with the option of restricting international protection to either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe and elsewhere before 1 January 1951": a temporal limitation with the option of a geographical limitation also. In 1967, in recognition of the ongoing need for refugee protection for events occurring post-1951, the 1967 Protocol to the Refugee Convention was adopted and the temporal limitation of the Refugee Convention was lifted for parties to the Protocol. Turkey, as an existing party to the Refugee Convention, ratified the 1967 Protocol, removing the temporal limitation of the Refugee Convention; however, Turkey chose to maintain the geographical limitation created by the Refugee Convention.³ In addition to Turkey, Monaco, Madagascar and Congo all maintain the geographical limitation of the original Refugee Convention; however, Madagascar and Congo are party to a regional refugee convention that offers international protection irrespective of country of origin (the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa).

WHO IS AN ASYLUM-SEEKER?

An asylum-seeker is a person who is seeking international protection as a refugee but who has not been formally recognized as one. The term normally applies to a person waiting for the government or the United Nations High Commissioner for Refugees (UNHCR) to decide on their claim for refugee status. Even without formal recognition, asylum-seekers cannot be forcibly returned to their country of origin and their rights must be protected. Refugee status is said to be declaratory in nature, meaning that individuals become refugees once they meet the definition provided in the Refugee Convention, which necessarily occurs before their status is determined.⁴ If an asylum-seeker is found not to be a refugee, following full and fair asylum procedures, they can be returned to their country of origin on the condition that their

return is done in accordance with international human rights standards.

WHO IS AN IRREGULAR MIGRANT?

An irregular migrant⁵ is someone who does not have legal permission to remain in a host country. Not all irregular migrants enter or stay in a country without authorization or lack of documents. For instance, migrants who are trafficked into a country to work will often have been provided with false documents by the traffickers. The status of a migrant may become irregular in a number of ways. Sometimes this may occur inadvertently; sometimes the reasons for the change of status may be arbitrary and unfair. During the course of a single journey, a migrant may slip in and out of irregularity according to government policies and visa regulations. An undocumented migrant is someone who lacks the documentation to lawfully enter or stay in a country.

WHO IS A PERSON IN NEED OF INTERNATIONAL PROTECTION?

Persons “in need of international protection” include refugees and asylum-seekers, as well as other individuals considered to need international protection against *refoulement*.⁶ In addition to international refugee law, other human rights instruments provide international protection against *refoulement* for individuals whose removal to their country of origin or country of habitual residence, would subject them personally to: a risk of torture (UN Convention against Torture, Article 3); a risk to their life (Article 6 of the European Convention on Human Rights (ECHR)); or a risk of cruel and unusual treatment or punishment, or other serious human rights violations (International Covenant on Civil and Political Rights (ICCPR), Article 7 and Article 3 of the European Convention on Human Rights).

NOTE ON TURKISH DEFINITIONS

In Turkish regulations the terms refugee and asylum-seeker are defined differently from the established definitions above based on international law. A refugee is defined as a foreigner or stateless person of European origin that has been recognized as such according to the criteria within Article 1 of the Refugee Convention by the Ministry of the Interior (MOI). An asylum-seeker is defined in Turkish regulations as a foreigner or stateless person of non-European origin whose status as an asylum-seeker has been recognized by a decision of the MOI that s/he meets the criteria within Article 1 of the Refugee Convention.⁷ For the purpose of this report, however, the terms refugee and asylum-seeker are used according to the established international definitions above.

1. INTRODUCTION

“There must be a way for refugees to become legal and there must also be a legal way for municipalities to assist them”

[State official within a local municipality commenting on the legal barriers to persons who are in need of international protection in Turkey]

On 8 December 2007 Turkish and international media outlets began reporting that bodies had been discovered on the shore of western Turkey close to the port city of Izmir after the sinking of a boat carrying dozens of people attempting to reach Greece. During the next days, reports of the number of bodies rose to 50 while the number of survivors remained at 10. It is thought that the number of persons aboard the overcrowded and unseaworthy vessel was even higher but the total number of persons who lost their lives is not known. This is far from being an isolated incident. Such a tragedy illustrates the desperation faced by persons trying to reach Europe. While some of them may be in need of international protection, they are caught between EU states employing ever greater measures to prevent access to would-be asylum-seekers and Turkey, which fails to uphold its responsibilities to provide international protection.

Turkey maintains a geographical limitation to the Refugee Convention and refuses to recognize persons of non-European origin as refugees.⁸ This results in a complex legal and practical situation in which refugees, asylum-seekers and other persons who may be in need of international protection are denied such protection. Despite this limitation, Turkey remains a country of asylum for thousands of persons fleeing persecution from non-European countries. In 2006 the UN's refugee agency, UNHCR which conducts refugee status determination for non-European asylum-seekers in Turkey, received 4,550 new asylum applications from non-European asylum-seekers, 7,650 in 2007 and in 2008, 12,980 new applications, representing a 70 per cent increase from the previous year.⁹ In 2007 there were 12,630 persons of concern to the UNHCR in Turkey from countries including Iran, Iraq, Afghanistan and Somalia among others.¹⁰ In addition to this number, the Office of the Head of the Turkish Armed Forces announced in October 2007 that more than 29,000 irregular migrants had been apprehended by the armed forces between January and October 2007.¹¹ It is accepted by human rights non-governmental organizations (NGOs) working with refugees in Turkey that among the number of irregular migrants there exist persons in need of international protection and that the number of irregular migrants apprehended is far less than the number of persons entering Turkey. However, no reliable figures for the number of persons entering Turkey irregularly are available.

Amnesty International is concerned that persons in need of international protection in Turkey are prevented from accessing their internationally recognized rights due to Turkish asylum regulations that do not conform to international standards and which are unfairly and arbitrarily applied. They are denied an opportunity to apply for asylum either at Turkey's borders or after being arbitrarily detained. Those that are able to submit an application do not have access to a fair and satisfactory national refugee status determination system and face severe restrictions in gaining access to health, adequate housing and work. Furthermore, Amnesty International is concerned that refugees, asylum-seekers and others in need of international protection are forcibly returned to countries where they are at risk of persecution in breach of the principle of *non-refoulement*.

Amnesty International calls upon the Turkish authorities to lift the geographical limitation to the Refugee Convention and to legislate for and implement a fair and satisfactory national asylum procedure. This should ensure in particular that all persons who may be in need of international protection are granted access to the refugee status determination system with full procedural safeguards and that the rights of asylum-seekers, refugees and others in need of international protection are respected. Amnesty International also calls upon the EU to grant further technical assistance to Turkey in achieving this and to share responsibility with Turkey in ensuring that the rights of persons who are in need of international protection are respected.

In the process of compiling this report Amnesty International delegates conducted interviews in February and May 2008 in Ankara, Istanbul, İzmir, Kayseri and Van, with refugees, asylum-seekers and other persons who may be in need of international protection, and with government authorities, intergovernmental agencies, NGOs and lawyers working with refugees.

2. BACKGROUND

Turkey is an original signatory to the Refugee Convention.¹² It is also a member of the Executive Committee of the UNHCR. However, Turkey maintains the “geographical limitation” to the Refugee Convention that defines a refugee as a person from Europe fleeing persecution.¹³ In maintaining this limitation it allows only “European” asylum-seekers from Council of Europe member states to apply for refugee status in Turkey. Turkey is effectively the only state to currently make this distinction between European and non-European refugees. Turkey is, however, also party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), all of which impose obligations on Turkey towards persons within its jurisdiction, irrespective of their country of origin.

Due to Turkey’s refusal to allow non-Europeans to apply for refugee status, UNHCR undertakes the task of assessing the claims of non-European asylum-seekers. The Turkish authorities have developed a parallel refugee status determination (RSD) procedure meaning that refugees must, in addition, be recognized by the national authorities. Under UNHCR’s agreement with the Turkish authorities, once asylum-seekers are recognized as refugees by both, UNHCR must seek to resettle them outside Turkey. Among others, large numbers of asylum-seekers from Afghanistan, Iran, Iraq and Somalia have sought refugee status in Turkey in this way, in addition to a growing number of asylum-seekers from various African countries. Large numbers of Europeans who may be in need of international protection have also fled to Turkey from Bulgaria, Bosnia and Herzegovina, Chechnya and Kosovo; while people within these groups have been granted permission to remain within Turkey, not a single person has been recognized as a refugee under the Refugee Convention by the national authorities in Turkey.¹⁴

2.1 ASYLUM REGULATIONS

At present no specific domestic law exists governing the state’s conduct towards refugees, asylum-seekers and persons who may be in need of international protection. In the absence of such a law, the conduct of state officials is governed by secondary legislation in the form of regulations, namely the Asylum Regulation (1994) amended extensively in 1999 and 2006 and further redefined by its Implementation Directive (2006).¹⁵ The lack of primary legislation weakens the level of protection to refugees and asylum-seekers and means that procedures can be amended without consultation.

The Asylum Regulation (as amended) applies to all those wishing to seek asylum in Turkey. The application procedure is the same for both European and non-European asylum-seekers, but under the Asylum Regulation, Europeans should be recognized as refugees if they are found to meet the criteria set out in the Refugee Convention. Non-European asylum-seekers

who are additionally required to register with the UNHCR under its refugee status determination procedure are instead provided with temporary residency, and given permission to seek asylum outside Turkey.

2.1.1 REGISTRATION AND APPLICATION FOR REFUGEE STATUS

The Asylum Regulation requires that all persons wishing to seek asylum must present themselves to the national authorities. Those persons who enter into Turkey regularly¹⁶ must present themselves to any local governorate¹⁷ while those persons that enter Turkey irregularly¹⁸ must present themselves to the governorate at the point that they entered the country. In both cases applications must be made within the shortest reasonable time.¹⁹ Non-European asylum-seekers are also required to register with UNHCR in addition to the MOI.

2.1.2 DISPERSAL

Once asylum-seekers are registered they are dispersed to a designated “satellite city” where they must reside until such time as they have been recognized as refugees or in the case of non-Europeans resettled in a third country. The 28 satellite cities are all provincial cities outside the capital, Ankara, and Istanbul. The satellite cities with the greatest number of resident asylum-seekers include the eastern city of Van and the central Anatolian cities of Kayseri, Konya and Eskişehir.

2.1.3 REFUGEE STATUS DETERMINATION

According to the Asylum Regulation, European and non-European asylum-seekers are required to have their status determined according to the terms of the Refugee Convention by the governorate where they register (Article 5). The authority to determine whether an asylum-seeker should be recognized as a refugee, or in the case of a non-European asylum-seeker, given permission to seek asylum in another country, rests with the Ministry of the Interior (MOI) or if that responsibility has been deferred, with the provincial governorate (Article 6). The Implementation Directive gives guidance on how the refugee status determination (RSD) interview should be conducted.²⁰ In the case of a negative decision, an asylum-seeker has 15 days in which to appeal. However, this appeal period may be shortened by a decision by the MOI in situations where it is deemed necessary, in order to allow for a quicker appeal decision.²¹ If there is no appeal made by the asylum-seeker, s/he is expected to leave Turkey within 15 days. If the person has not left Turkey after this period, their deportation is effected by the MOI. If an appeal is made and rejected, the rejected asylum-seeker will be deported by the MOI. In the case of non-European asylum-seekers, UNHCR runs a parallel process whereby it conducts RSD interviews on which basis it may recognize them as refugees. In practice, the vast majority of refugee status decisions made by the MOI mirror those taken by the UNHCR. Resettlement of non-European refugees to third countries is sought by the UNHCR in cooperation with the MOI.

3. ACCESS TO ASYLUM PROCEDURE

At the cornerstone of international refugee protection is the principle of *non-refoulement* which provides a duty not to return a person in any manner whatsoever to a country where they would be at risk of serious human rights abuses. Included in this is the principle of non-rejection at the frontier – the obligation on states to permit entry to people seeking international protection to determine through a fair and satisfactory asylum procedure whether they would face serious human rights abuses if returned. The right of people to leave their countries and seek asylum abroad is one of the fundamental rights within the 1948 Universal Declaration of Human Rights (UDHR).²² While Turkish asylum regulations in principle guarantee the right to access an asylum procedure in Turkey, there remain legal and practical barriers that prevent this happening. Asylum-seekers are routinely denied access to an asylum procedure either through rejection at the frontier or after being detained for irregular entry to Turkey. Furthermore, as discussed below, Turkish authorities do not give European nationals, who may be in need of international protection, access to asylum procedures.

3.1 ACCESS DENIED TO EUROPEAN ASYLUM-SEEKERS

Persons in need of international protection from Europe have fled to Turkey from places including Bulgaria, Bosnia and Herzegovina, Chechnya and Kosovo. In response to large numbers of persons who may be in need of international protection arriving in Turkey from the former Yugoslavia from 1992-7 and Kosovo in 1999, the Turkish authorities provided temporary permission to remain and accommodated them in camps. However, Amnesty International is concerned that no European asylum-seeker has been recognized as a refugee and the vast majority of European persons who may be in need of international protection are not given access to an asylum procedure.²³ In particular, Chechen persons who may be in need of international protection have not been granted access to an asylum procedure and many Chechens have remained in Turkey since 1999 without any official status. In the face of an official refusal to view the Chechens as persons seeking asylum, many did not apply for any status fearing that they would be returned. Persons who sought to regularize their status have been provided with the status of “guests” allowing them to remain temporarily in Turkey (see boxed text on the Chechens). Under the terms of the agreement between the Turkish authorities and UNHCR, European nationals cannot access UNHCR procedures, which means that they are unable to seek resettlement and often have no official status.

CHECHEN 'GUESTS' IN TURKEY

Following the outbreak of war in Chechnya in 1999, thousands of Chechens were forced to seek asylum in neighbouring countries including Turkey. Following an initial movement in 1999, Chechens fleeing the conflict and associated human rights violations continued to arrive in Turkey until 2005 and representatives of the Chechens said the group currently in Turkey numbers approximately 1,000. Unlike the vast majority of persons arriving in Turkey who may be in need of international protection, the Chechens, whose country of origin is within the Council of Europe, fall within the category of 'European' under Turkish asylum regulations. This allows them, in theory to have access to refugee recognition and local integration within Turkey. However, in practice, Chechen persons who may be in need of international protection have not been able to access refugee status determination procedures. Representatives of the group told Amnesty International that not one person had been recognized as a refugee in Turkey. Instead they have been granted by the MOI a legally ambiguous status as 'guests'. Such status, while granting them temporary permission to remain in the country, does not consider their protection needs as persons fleeing human rights violations or the individual circumstances of their claims. As a result, this temporary and revocable status has not alleviated fears of deportation among the community who live in unofficial 'camps' in appalling conditions.

Attempts made by individuals to make asylum applications have reportedly been refused by officials at the Istanbul Directorate of Security. In the main these decisions have not been challenged due to the fear that the little security brought by their status as 'guests' would be withdrawn if any judicial application was made. Lawyers told Amnesty International that in the limited number of cases where judicial challenges had been made, they had not resulted in anyone being accepted into the asylum procedure.²⁴ Representatives and lawyers also reported that Chechens who arrived without official documentation have at times not been able to receive residence permits based on their status as 'guests'. At the current time many members of the community have been provided with residence permits as 'guests', on the basis of explicit orders of the Ministry of the Interior; however, they can be cancelled at any point. Still other members of the community live without any official status or documentation at all.

Representatives of the community told Amnesty International that officials had threatened those with or without residence permits with deportation and that members of the group had been detained or forced to pay bribes to the police at times when their presence was politically sensitive such as when the then Russian President Putin made an official visit to Turkey in 2004. In addition to not being able to access the asylum procedures of the national authorities, Chechens are doubly disadvantaged in that as 'Europeans' according to Turkish asylum regulations, they are not able to apply for status recognition to the UNHCR in Turkey, leaving them without the possibility of either recognition in Turkey or resettlement in third countries.

The majority of the Chechens are housed in three districts of Istanbul: Fenerbahçe, Beykoz and Ümraniye, in sites unofficially referred to as 'camps'. In each of these sites it was reported that due to their inability to pay for water, electricity and gas, there are frequent cuts in these services. Heating in winter was reported to be a particular problem, being both inadequate and potentially lethal due to the possibility of gas leaks. While it was reported that many of the children were able to attend elementary classes, it has not been possible for children to obtain qualifications or any documentation of their schooling due to not being able to document their previous educational history. Like other asylum-seekers in Turkey, Chechens have not been able to realize the right to work in practice and where unofficial work is available, it is for very low wages. Forced into poverty, local authorities and civil society organizations have at times provided the Chechens with food on a charitable basis. Likewise, in the absence of any free access to medical treatment, charitable foundations have allowed some members of the group to receive limited treatment. However, no state supported policy exists to address issues such as access to health care and education.

3.2 DENIAL OF ACCESS AT THE BORDER

Amnesty International is concerned that persons who may be in need of international protection are routinely denied the opportunity to apply for asylum at land borders and after arrival at airports. While Turkish asylum regulations provide for the receipt of asylum applications at border gates,²⁵ the regulations refer only to obligations to asylum-seekers after they have crossed the border and are inside Turkish territory but do not mention the obligation to accept applications at the border, in line with international standards.²⁶

According to international and regional standards, any individual seeking international protection who is within the jurisdiction of the state should be permitted access to a fair and satisfactory asylum process with full procedural safeguards to determine their need for international protection under the principle of *non-refoulement*. The jurisdiction of the state includes a state's territory, including territorial waters, as well as extra-territorially where individuals are under the power or effective control of the state or its agents.²⁷ The principle of *non-refoulement* requires that entry to a fair and satisfactory asylum procedure is granted to those who reach the border of a state under the understanding of non-rejection at the frontier as set out in various conclusions of the Executive Committee of UNHCR.²⁸ For those who are intercepted in territorial waters or extra-territorially and are under the power or effective control of the state or its agents, they also must be granted access to a fair and satisfactory determination process with full procedural safeguards, which in practice means they may need to be transferred to the actual territory to ensure such standards are met.

Iraqis (including those who possess valid visas) in need of international protection have reportedly been refused access to an asylum procedure and denied access to Turkey both at the airport in Istanbul and at border posts on the land border despite stating that they fear being killed or suffering other serious violations of their human rights if returned to Iraq and that they wish to apply for asylum in Turkey. Given the current conditions in Iraq, such automatic returns raise serious human rights concerns.²⁹

It is also apparent that persons detained in transit zones at airports are not only routinely refused access to an asylum procedure but also are refused access to UNHCR, NGOs and lawyers. This situation was confirmed to Amnesty International by officials within the Directorate of Foreigners, Borders and Asylum who defended this policy based on the fact that airport transit zones are not within Turkish territory.³⁰ Such a view conflicts directly with the case law of the European Court of Human Rights³¹ and with international law more generally.

In a report on the detention of persons who may be in need of international protection in Turkey, the human rights NGO Helsinki Citizens' Assembly Turkey documented the case of a Nigerian asylum-seeker "Mr. A" who was detained within the transit zone of Istanbul Atatürk Airport in December 2006. According to the report "Mr. A" repeatedly requested to apply for asylum stating that he would be killed or tortured if returned to Nigeria. Both oral and written requests for asylum were refused by the police. "Mr. A" was also reportedly refused permission to meet with a representative of the UNHCR. During several failed attempts to return "Mr. A" to Nigeria, he was allegedly ill-treated by police officers including being gagged, slapped, kicked, punched and left for two hours with his hands and feet handcuffed behind his back; he was finally deported to Nigeria without being granted any access to asylum procedures.³²

3.3 DENIAL OF ACCESS TO ASYLUM FOR DETAINED PERSONS

Asylum-seekers and refugees are routinely detained after being arrested for irregular entry into Turkey, for being outside the area in which the person is authorized to reside by the MOI; or due to attempted irregular exit from Turkey, all of which are criminal offences according to Turkish law.³³ In practice although charged with a criminal offence, persons are routinely acquitted then detained in "Foreigners' guest-houses" for administrative purposes.³⁴ While according to Turkish regulations requests for asylum can be made from foreigners' guest-houses, in practice this right is in many cases not available due to the lack of any legal procedure being followed between detention and deportation or in the case of official detention, lack of available information on the asylum procedure, the absence of independent monitoring to show that persons who may be in need of international protection are given access to the refugee status determination procedure, the denial of access to the UNHCR, lawyers and NGOs working with asylum-seekers and refugees, and the refusal of police officers to accept asylum claims.

In April 2008 Amnesty International was contacted by relatives of an Iraqi family detained in Antalya in southern Turkey after being arrested for entering Turkey with false passports. The family reported that they had fled Baghdad because they feared for their lives and that they would be killed if returned to Iraq. Persons who had been detained together with the family confirmed to Amnesty International that the family was indeed in detention; however, police officers refused to acknowledge that the family was in detention. A request was made by the UNHCR on behalf of the family to allow an application for asylum to be made and a lawyer tried to gain access to the family but was informed that no such persons were being held. A detainee later reported to Amnesty International that the family was forcibly returned to Iraq.

The case of the Iraqi family demonstrates some of the violations of the rights of asylum-seekers commonly experienced. Under the Refugee Convention, asylum-seekers should not be penalized for entering the country irregularly if they are arriving from a country where their life or freedom is threatened. Thus, the family should not have been prosecuted or detained as a result of being in possession of allegedly false documents.³⁵ Once in detention, the family was not given the opportunity to apply for asylum.

In addition, the forcible return of persons to Iraq raises serious concerns under any circumstances. Amnesty International is opposed to all forcible returns to any part of Iraq, including Northern Iraq at the present time. In line with UNHCR's position³⁶, Amnesty International believes that all individuals from southern and central Iraq should be granted refugee status or a complementary form of protection. Regarding Iraqis from the Kurdistan region of Iraq, an individual assessment in a fair and satisfactory asylum procedure should be made to assess whether they are in need of refugee status or complementary protection. However, if Iraqis from the Kurdistan Region of Iraq do not qualify for refugee or complementary protection, they should be granted temporary humanitarian protection until the status of Kirkuk has been finally and peacefully resolved and it is otherwise safe for them to return.³⁷

Amnesty International is concerned that the case of the Iraqi family is typical of many where even with the intervention of NGOs providing assistance to refugees and UNHCR, persons who may be in need of protection are refused access to asylum procedures and instead, forcibly returned. In another such case, an Afghan national made an asylum request on 9

July 2007 after he was visited in gendarmerie detention by Amnesty International Turkey representatives. However, 10 days later without any response to the request for asylum, he was transferred to Istanbul along with other Afghan nationals ahead of their planned forcible return to Kabul. In this instance his lawyers were able to obtain an interim measure from the European Court of Human Rights (ECtHR) stopping the deportation. Later during the same month a group of Iranians were deported after three weeks of detention in Muş despite their repeated requests to apply for asylum and the intervention of NGOs and UNHCR.³⁸ Also in July 2007 some 135 Iraqis were forcibly returned to Iraq without being given access to the UNHCR or the opportunity to seek asylum after being detained in the province of İzmir in western Turkey.³⁹

While applications to the ECtHR have proved to be the only reliable mechanism in preventing forcible returns from detention, NGOs have expressed concern that even the interim measures of the Court are not always respected.

Furthermore, it was reported to Amnesty International that in 2007 some 2,000 persons detained by the gendarmerie were deported without making an asylum claim despite an agreement between the gendarmerie and the UNHCR to provide emergency support that applied to this group.

3.3.1 LACK OF INFORMATION ON THE ASYLUM PROCEDURE

Detained asylum-seekers are frequently not provided with information on how to apply for asylum. While the MOI has produced a leaflet in several languages informing asylum-seekers of the procedure to be followed in order to seek asylum in Turkey, there is evidence that the leaflet is not generally available in places where persons who may be in need of international protection are detained. An official at the Foreigners Department of Van Directorate of Security confirmed to Amnesty International that the leaflets were not available to detainees because the procedure for making an asylum claim is well known.⁴⁰ The lack of information provided to detained persons who may be in need of international protection is compounded by the absence of interpreters to allow communication between them and officials. Fundamentally, no procedure exists to ensure that persons who may be in need of international protection have access to a fair and satisfactory asylum procedure before steps are taken to deport them.

3.3.2 ACCESS TO LAWYERS DENIED

International standards require that detained asylum-seekers must have access to a lawyer.⁴¹ Although technically able to request the assistance of a lawyer when arrested for violations of the Passport Law, which forms part of criminal law, persons who may be in need of international protection in practice do not benefit from this right and domestic law does not provide the authorities with an obligation to provide a lawyer or inform the suspect of their right to a lawyer.⁴² Interpreters are not provided to inform them why they have been arrested and charged. If they are not criminally charged, but are instead held in administrative detention, they are no longer officially in detention according to Turkish law and as such do not have the declared right to access to a lawyer under Turkish law. While access to both UNHCR and lawyers has been granted on occasions to persons in detention in Foreigners' guest-houses, in the vast majority of occasions it has been denied and access to NGO representatives is also routinely refused. Police officers routinely refuse to acknowledge to lawyers that persons who may be in need of international protection are being held in guest-

houses and even if a lawyer asks the authorities whether their client is being held, the information is not reliably provided.

3.3.3 REFUSAL TO ACCEPT ASYLUM APPLICATIONS BY POLICE OFFICERS

Access to the asylum procedure was also denied due to police officers refusing to take applications for asylum. In its report on detention in Foreigners' guest-houses, Helsinki Citizens' Assembly stated that out of 11 people they interviewed who attempted to make an asylum claim while in detention, six of them were refused permission to submit an asylum claim by police officers. Of the three persons who were able to submit claims, all of them experienced extreme difficulties in doing so. One person was detained for four months after submitting an asylum claim, another was detained for six months before making an asylum claim due to lack of information regarding the procedure and then detained for a further five months after submitting the asylum claim. Both persons were released before their status had been determined. A third person was denied both oral and written requests to submit an asylum claim and at the time of the publication of the Helsinki Citizens' Assembly report had been in detention for a further seven months after he was able to submit the claim.⁴³ Of the persons whose requests to apply for asylum were reportedly refused and who were served with deportation orders, two men --both detained at the Kumkapı Foreigners' Guest-house in Istanbul-- were allegedly told by police officers that the Turkish state does not take asylum applications and that they should contact UNHCR. On contacting UNHCR they were reportedly told that UNHCR could only register them after they had submitted asylum claims to the police. The remaining four persons who were being detained at the Kırklareli Gaziosmanpaşa Guest-house were reportedly forced to sign documents stating that they had withdrawn their asylum application and that they would not apply for asylum again. The four persons were also reportedly told that the police stated that persons applying for asylum would be detained in the facility for two years.⁴⁴

3.3.4 ARBITRARY EXPULSION

While Turkish law sets out a legal procedure to be followed before any foreign national can be deported, Amnesty International was told by persons who had been forcibly returned that in the case of persons caught close to the Iranian border, persons who may be in need of international protection were deported without any legal procedure or opportunity to apply for asylum and that they were subjected to beatings both after being apprehended by the gendarmerie in Turkey and after being forced to cross back over the border into Iran. According to the testimonies of persons taken by Amnesty International some persons were detained and deported to Iran three times before being able to re-enter Turkey and cross the border area.⁴⁵ An official within the Foreigners Department of the Van Directorate of Security told Amnesty International that an informal agreement exists with the Iranian authorities to return any person thought to have entered Turkey irregularly from Iran and caught within 50km of the border.⁴⁶ Irregular deportations across the Iraqi border have also been reported by refugee assisting organizations and lawyers.

4. THE RIGHTS OF ASYLUM-SEEKERS AND REFUGEES

The rights of asylum-seekers and refugees within the asylum procedure are also violated. Amnesty International is concerned that asylum-seekers do not have access to a national procedure for determining their status as refugees that is fair, satisfactory and in line with international standards. Both asylum-seekers and refugees' access to education, health, work and adequate housing is restricted. Asylum-seekers and refugees are also at risk of detention in poor conditions and where they are denied rights applicable to all detainees. Both registered asylum-seekers and refugees recognized by UNHCR have been forcibly returned to countries where they may face serious violations of their human rights in contravention of the principle of *non-refoulement*. The resettlement of UNHCR-recognized refugees to third countries has been obstructed by state authorities.

4.1 REFUGEE STATUS DETERMINATION PROCEDURES

A refugee status determination (RSD) procedure is the mechanism by which states or UNHCR determine if an asylum-seeker meets the refugee definition set out in the Refugee Convention or UNHCR's statute, respectively. While there is no explicit obligation on states to undertake RSD, it is inherent in the *non-refoulement* obligation found in the Refugee Convention and other human rights treaties. Fulfilling the Convention obligations therefore requires that any RSD carried out be as effective as possible to ensure that individuals who meet the refugee definition are recognized as refugees and given the protection they deserve.

As the Refugee Convention itself does not provide standards to regulate RSD procedures, the procedures should therefore be regulated by general safeguards for fair and due process provided under international human rights law and norms, as well as authoritative standards developed by UNHCR.⁴⁷ By ratifying the Refugee Convention, the State parties undertake a legal obligation to provide surrogate protection to individuals meeting the refugee definition. Implied in this obligation is the requirement to adequately determine the status of those in need of protection. This requires RSD procedures to meet minimum due process guarantees, including providing the applicant with clear and comprehensive reasons for the asylum decision, access to evidence relied upon to decide their asylum claim, and the right to appeal before a competent and independent authority (for a list of what Amnesty International considers to be the minimum standards in refugee status determination procedures, see Appendix 2).

Amnesty International has concluded that asylum procedures in Turkey fall short of international standards, notably in terms of the nature of the asylum authority mandated to conduct RSD, access to legal counsel, the conduct of RSD interviews, notification of decisions, and the appeals procedure. While national asylum procedures are set out in the

1994 Asylum Regulation, in practice the national authorities' decisions on the status of non-European asylum-seekers have, in the great majority of cases in the past, mirrored those made by UNHCR on individual cases. However, in recent years in a growing number of cases the decisions of the national authorities have not matched those of UNHCR.⁴⁸

4.1.1 ASYLUM AUTHORITY

The most basic requirements of the asylum authority are that it be an independent and specialized body and that asylum claims be decided by a competent official who has interviewed the applicant personally.⁴⁹ In Turkey, the Ministry of the Interior assumes the authority for conducting RSD through its Department of Foreigners Borders and Asylum which forms part of the General Directorate of Security under the 2006 amendments to the Asylum Regulation authority for carrying out RSD can be transferred to the provincial governorates (Article 6). However, as of mid-2008, only the Istanbul Governorate is authorized to make decisions on refugee status while in all other cases RSD interviews are carried out by provincial governorates and the decision making process is conducted by the MOI in Ankara. Article 30 of the Asylum Regulation stipulates the personnel that will conduct the RSD interviews. It provides for police officers to do this as part of their other duties and on a temporary basis. While police officers are required to conduct RSD interviews in civilian clothes, the independence of the interviewers and of the authority of the decision-making body, which is part of the security apparatus, remains in doubt. The value of training programmes provided to officials is reduced due to the fact that officials' responsibilities are temporary and that they are replaced by police officers who have not received training.

4.1.2 ACCESS TO LEGAL COUNSEL AND LEGAL AID

Vulnerable to being returned to a risk of persecution and faced with an unfamiliar and confusing asylum procedure, applicants cannot be expected to know how to exercise their rights, which may be essential for them to access effective international protection. Asylum-seekers should be given access to legal counsel at all stages of the asylum procedure and be made aware that they have this right. Amnesty International is concerned that under Turkish asylum regulations, legal assistance is far from adequately provided for. There is no facility for legal aid at first instance while administrative appeals can be made through legal counsel but without the provision of state-funded legal aid.⁵⁰ There is also no mention within the regulations of legal aid being made available at the appeal stage to asylum-seekers who make applications after being detained and are subject to an accelerated procedure. State-funded legal aid is only available to judicially challenge in the Administrative Court an administrative decision not to recognize an individual as a refugee. However, rejected asylum-seekers are not notified of this right. At the time of writing, few Bar Associations were providing legal assistance to asylum-seekers due to a lack of explicit reference to legal aid being extended to foreign nationals.⁵¹

4.1.3 CONDUCT OF THE RSD INTERVIEW

In practice the conduct of RSD interviews by local officials differs greatly from one provincial governorate to another. Concerns over confidentiality were frequently expressed to Amnesty International. Interviews were not conducted in private and more than one interview would take place in the same room at the same time. Moreover, the authorities did not have the interpreters necessary for all applicants to express their claim. An official from the Foreigners Police in Van told an Amnesty International delegate that interpreters existed for Farsi, Arabic and Kurdish languages during RSD interviews.⁵²

4.1.4 COUNTRY OF ORIGIN INFORMATION

At the current time there exists no system for compiling up-to-date country of origin information for the interviewer and the decision makers to enable them to assess the credibility of applicants' claims and the risks they face. As of mid-2008 a project to establish a country of origin information system had been initiated but not completed. Country of origin information is essential for establishing the credibility of asylum-seekers, verifying their claims and assessing the risk they face on return. In the absence of such information, the interviewer and the decision maker cannot make a correct determination of the need for international protection. As a result, Amnesty International considers that the RSD procedure is unfair.⁵³

4.1.5 NOTIFICATION OF DECISIONS

National asylum regulations require that written notification be given to asylum-seekers of a positive or negative decision for refugee status.⁵⁴ However, in practice only deportation orders are issued in the case that a negative decision has been issued. No written notification is given of asylum-seekers' right to legal aid, nor the fact that they can mount a legislative appeal against the second negative decision. In a number of cases asylum-seekers have been deported without any written notification being issued or opportunity to appeal (see section on *refoulement*).

4.1.6 APPEAL RIGHTS

The right to a suspensive appeal before a competent and independent authority is a fundamental aspect of a fair RSD procedure and as a remedy to violations of human rights protected under international human rights law.⁵⁵ Amnesty International is concerned that there is no effective and independent appeal within the RSD procedure in Turkey. A first instance negative decision is subject to a review by a senior officer within the same department responsible for issuing the first decision. In the case of accelerated procedures, an administrative appeal of a first instance negative decision must be lodged within two days. While all administrative decisions can be challenged at the Administrative Court, this information is not provided to rejected applicants.⁵⁶ Applications to the Administrative Court are also ineffective due to the fact that there is no legal requirement to suspend a deportation order in light of an application to the court. While the Court does have the facility to issue an interim measure to suspend a deportation, the issuing of such an order may well come months after an application has been made and fail to prevent a deportation being carried out. Officials at the Department for Foreigners Borders and Asylum told Amnesty International delegates that in practice, if an application is made to the Administrative Court, a deportation will be suspended. However, in the event that the Court does not issue an interim measure, the deportation is then enacted without waiting for the final decision of the court to rule on the legality of the deportation.⁵⁷

The ineffectiveness of the appeals procedure is underlined by the fact that between 2002 and 2007 only 123 asylum-seekers had lodged an administrative appeal against a negative first instance decision, while only 22 asylum-seekers had lodged a judicial appeal through the Administrative Court system.⁵⁸ In a positive development, in 2008 the number of applications to the Administrative Court increased dramatically and on occasions the court did issue interim measures preventing deportations within days rather than months of an application being made. However, with no legal requirement for the authorities to suspend a deportation after an application to the Administrative Court, this remedy has remained

unreliable. In light of previous rulings by the European Court of Human Rights that the appeal procedure did not represent an effective remedy, applications made to the ECtHR have frequently resulted in the issuing of interim measures to prevent the deportation.⁵⁹

4.1.7 ACCELERATED PROCEDURES

Amnesty International is concerned that the use of accelerated procedures to determine refugee status may undermine fundamental human rights guarantees including the right to seek and enjoy asylum and the prohibition of *refoulement*.⁶⁰ In Turkey, the categories of persons for whom an accelerated asylum procedure will be conducted is set out in Section 13 of the Implementation Directive. These include: people arrested for “illegal” entry to Turkey, people arrested for attempted “illegal” exit from Turkey, people who have committed a crime and those who had previously lodged an asylum application.⁶¹ Procedural safeguards for the accelerated procedure are even weaker than for the standard procedure. Asylum-seekers being subjected to this procedure are kept in detention. The accelerated procedure should be completed in five days. It makes no mention of the need for legal representation. The period for submitting an appeal is only two days.⁶² In practice, NGO representatives, lawyers and often the UNHCR are unable to gain direct access to asylum-seekers in detention and are unable to advise on the procedure. Asylum-seekers in detention reported that they were not communicated the results of the status determination procedure and were required to sign documents that they did not understand. In many cases the procedure could not be completed within five days and the asylum-seekers were released from detention, in some cases after being held for many months, without their status being determined.⁶³

4.2 ACCESS TO HEALTH, EDUCATION, WORK AND ADEQUATE HOUSING

Amnesty International is concerned that refugees’ and asylum-seekers’ access to economic and social rights is severely restricted both in theory and in practice in contravention of Turkey’s international obligations. In the case of health services, regulations make it clear that the state carries no obligation to provide for the health of refugees and asylum-seekers. In the case of the right to work, although technically possible to obtain permission to work, the procedure is unworkable to such an extent that refugees and asylum-seekers are unable to work legally in Turkey.⁶⁴ An additional problem barring access to various services is the requirement for refugees and asylum-seekers to pay for a residence permit (*ikamet belgesi*) in order to access any services that are available.

4.2.1 IDENTITY DOCUMENTS

Asylum-seekers and refugees are only able to access services in the satellite city they are required to reside in under the system of dispersal.⁶⁵ A further stipulation is that all persons must be in possession of a valid residence permit.⁶⁶ A residence permit is also required for each member of the refugee or asylum-seeker’s family. Under regulations, a renewable six-month residence permit is given to refugees and asylum-seekers resident in satellite cities.⁶⁷ In 2009, the fees for a single six-month residence permit were approximately 300 Turkish Lira (around 150 Euro), meaning that many refugees and asylum-seekers especially those with large families are not able to pay the fees for the residence permit and are therefore left without access to services. While in law a facility exists for those who are not able to pay for the residence permit to provide evidence of this and be exempted from the majority of the costs of the residence permit, this is seldom implemented. Amnesty International was also told by NGO representatives that in 2008 it has been even rarer for refugees and asylum-seekers to be exempted from paying fees. Compounding the problem is the system of fines

imposed if there is a delay in asylum-seekers or refugees regularizing their status by reporting to the designated satellite city without delay. In many cases the inability of the asylum-seeker to pay the fine or the residence permit fees resulted in them being effectively barred from accessing any available services.

4.2.2 HEALTH

Under international law, refugees, asylum-seekers, and other persons of concern to UNHCR benefit as any other individual from the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This right entails non-discriminatory access to services which are equivalent to those available to surrounding host communities.⁶⁸ According to regulations it is the responsibility of the refugee or asylum-seeker to cover the costs of all required health services. Should this not be possible then according to the regulations the UNHCR should be responsible for providing assistance.⁶⁹ While the regulations make no mention of any state obligation to provide for the health of asylum-seekers or refugees a project exists with the Social Assistance and Solidarity Foundation in order for registered asylum-seekers and refugees to access health services. It was reported to Amnesty International that access to health services through this scheme varied greatly depending on the satellite city.

A Sudanese asylum-seeker interviewed by Amnesty International explained that he was able to receive treatment in the city where he first registered, but after being transferred to a satellite city he was not able to continue his treatment despite fulfilling the registration requirements. Amnesty International was also told that in 2008 an internal Ministry of the Interior directive was circulated to local authorities stating that refugees and asylum-seekers should not be able to benefit from access to health services under the scheme with the Social Assistance and Solidarity Foundation. It was also reported that the level of access to health services under the scheme reduced still further in 2008 and that by early 2009 no asylum-seeker or refugee has been able to access services through the Social Assistance and Solidarity Foundation. In addition to this, an opportunity to address the issue was missed when changes made to the Social Security and Public Health Insurance Law (no.5510) in April 2008 failed to include asylum-seekers and refugees among groups able to access public health insurance.⁷⁰

4.2.3 EDUCATION

The Turkish authorities are obliged under the ICESCR and the Children’s Convention to ensure the right to education for all children under their jurisdiction. This includes, in particular, ensuring the provision of free and compulsory primary education to all children in Turkey without discrimination on the basis of their status as refugees or asylum-seekers, any other legal status, or the legal status of their parents or guardians.⁷¹

Administrative obstacles and other policies that nullify the enjoyment of the right to education, including through discrimination, are also prohibited under international human rights law.⁷² However, in practice, while access to primary education for children of refugees and asylum-seekers was generally granted, it was dependent on the family being registered in the satellite city and obtaining the necessary residence permits. Amnesty International was told of a number of cases in which bureaucratic reasons prevented children of refugees and asylum-seekers attending primary education. Access to secondary education was far less frequent and in cases where children of asylum-seekers and refugees were allowed to attend

classes. In many cases they were not able to obtain graduation certificates due to an inability to provide previous educational records from the children's country of origin.

4.2.4 WORK

The right to work and rights at work are protected in a range of binding international conventions to which Turkey is party.⁷³ According to these standards, Turkey is required to take steps towards achieving progressively the full realization of the right to work for everyone, without discrimination, including on the basis of national origin.⁷⁴ Under regulations applicable to all foreign nationals, asylum-seekers and refugees who are in possession of a six-month residence permit can apply for permission to work at a specified place of work after receiving a job offer. In order for permission to be granted it is necessary for the employer to demonstrate that the position cannot be filled by a Turkish citizen. There are additionally fees to be paid by the prospective employer and administrative costs for the refugee or asylum-seeker in terms of having an official translation of their passport made. NGO representatives told Amnesty International that only one asylum-seeker had gained permission to work at the current time. An official from the Van Directorate of Security, the satellite city with the greatest number of resident refugees and asylum-seekers, also confirmed to Amnesty International that no asylum-seekers registered in Van had obtained permission to work.⁷⁵ Given the absence of either legal employment or welfare payments, many asylum-seekers and refugees survive by obtaining irregular employment tolerated unofficially by the authorities, often in exploitative conditions for very low wages. The availability of work for refugees and asylum-seekers is further reduced by the fact that there are few job opportunities available in the provincial satellite cities and that asylum-seekers and refugees are prohibited from living in the large metropolitan cities where there is a better chance of finding informal work.

4.2.5 ADEQUATE HOUSING

The right to adequate housing is guaranteed in, among other standards, the ICESCR, to which Turkey is a party.⁷⁶ According to the UN Committee on Economic, Social and Cultural Rights, the right to adequate housing includes legal security of tenure and protection from forced eviction and other harassment and threats; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁷⁷ At the current time there is no state provision of housing or other accommodation throughout the asylum process. Amnesty International was told of particular instances of short-term accommodation being provided to asylum-seekers in hotels at the cost of the local authorities but no long-term provision is offered in any of the satellite cities. The building of six reception centres, each to accommodate an average of 750 asylum-seekers was planned in 2009 but no reception centres yet existed at the time of writing. Local human rights NGOs expressed concerns that the proposed reception centres may not meet international standards on reception.⁷⁸ In the absence of state support given to refugees and asylum-seekers to find private accommodation and the lack of state-provided accommodation, individuals typically live in overcrowded and inadequately heated houses, often paying exorbitant rents to private landlords.

LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM-SEEKERS AND REFUGEES IN TURKEY: A DOUBLE DISCRIMINATION

A small but significant number of refugees and asylum-seekers in Turkey are those forced to flee their countries of origin due to a fear of persecution based on their sexual orientation or gender identity. In addition to sharing the problems of other refugee populations in Turkey, lesbian, gay, bisexual, same-sex practising and transgender refugees told Amnesty International that they have faced additional discrimination and threats from private individuals in the cities where they live and that the authorities have not assisted them when called upon to do so.

Lesbian, gay, bisexual and transgender (LGBT) refugees and asylum-seekers' experience of being dispersed to the 28 socially conservative Anatolian satellite cities is particularly harsh.⁷⁹ LGBT refugees and asylum-seekers in Van told Amnesty International that they suffered a double discrimination from the police and from the local population both as non-Turkish nationals and due to their sexual orientation or gender identity or expression. Amnesty International was told that asylum-seekers have been assaulted by groups of Turkish nationals in Van. According to the persons interviewed, police officers did not show any interest in investigating the claims when an incident was reported. Applications made by lesbian, gay, bisexual and transgender asylum-seekers to be transferred to another satellite city where they may be subjected to less hostility have apparently not been accepted by the police with applications pending in one case after eight months.⁸⁰

In Kayseri, another Anatolian city that hosts a large number of lesbian, gay, bisexual and transgender asylum-seekers and refugees, Amnesty International was told that they have been better treated by police. However, problems remain. Lesbian, gay, bisexual and transgender refugees and asylum-seekers reported to Amnesty International that they were afraid of physical assault and of being raped. According to the reports of asylum-seekers in Kayseri, there was an attack on Iranian gay and transgender asylum-seekers in March 2008. M, an Iranian gay man, now based in Kayseri, told Amnesty International that language barriers mean that LGBT asylum-seekers and refugees cannot communicate their fear or the details of these attacks to the police. He said that he was chased by two men: terrified, he called the police but was unable to make himself understood. He did not return home that night, fearful the men would follow him.⁸¹

One gay couple, who live together in an apartment in Kayseri, were initially called in to the apartment's managing committee and told to stop looking the way they did - to generally "clean themselves up", or they would be shot in the legs. One of the men changed his appearance through fear of reprisals. The caretaker of the building then came to the door with a letter signed by all 52 other residents of the apartment block, telling them to get out. "We were both so upset we cried all night."⁸² They have been spat at and had stones thrown at them. One of the men said he has developed a stomach ulcer, and has nightmares. The couple say that the police have not intervened, despite being aware of the situation.

Discrimination against LGBT asylum-seekers and refugees still further reduces their chances of supporting themselves financially while in Turkey. Like other refugees and asylum-seekers, they are not able to get permission to work in Turkey or obtain other means of support. However, due their appearance or prejudicial perceptions about their "lifestyle", LGBT asylum-seekers and refugees are also excluded from the informal employment that many asylum-seekers are forced to rely on.

4.3 DETENTION

*"If we don't give money then they beat us. They use our money to send us back to Afghanistan."*⁸³

In addition to denying access to the asylum procedure while in detention,⁸⁴ the practice of detaining asylum-seekers and refugees in Turkey raises further human rights concerns. Asylum-seekers and refugees are often detained for extended periods of time without a clear justification for their detention and no maximum time limits are given for the period of detention. Legal protections normally applicable to persons in detention are not made available to asylum-seekers and refugees. Asylum-seekers who are able to apply for refugee status while in detention are not given access to a procedure equal to that applicable to persons who apply from outside of detention. Furthermore refugees and asylum-seekers are frequently held in poor conditions and given insufficient food. Asylum-seekers and refugees have also reported that they have been subjected to ill-treatment by police and gendarmerie officers.

4.3.1 FOREIGNERS' GUEST-HOUSES

In the vast majority of cases refugees, asylum-seekers or other persons who may be in need of protection are detained after being arrested under the Passport Law or Law on the Sojourn and Movement of Aliens for one of the following criminal violations: irregular entry into the country; attempted irregular exit from the country; or leaving their designated area of residence without permission.⁸⁵ In these cases, individuals are held in pre-trial detention for a short period before being brought before a judge. Criminal charges against the refugees and asylum-seekers and other persons who may be in need of protection are officially withdrawn but the individuals are then automatically transferred to administrative detention at a foreigners' guest-house.

4.3.2 ARBITRARY DETENTION

The Refugee Convention requires that asylum-seekers and refugees are not penalized for irregular entry to or presence in the country of asylum provided that they have come directly from a territory where their life or freedom was threatened.⁸⁶ International standards also require that refugees and asylum-seekers are detained in only the most exceptional prescribed circumstances and where the authorities can demonstrate in each individual case that detention is necessary and proportionate to the objective of preventing absconding, to verify identity or ensure compliance with a deportation order.⁸⁷ There should be a presumption against detention established by law. Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention (for this and other safeguards see Appendix 1: Amnesty International's policy on the rights of refugees and asylum-seekers in detention).

Amnesty International is concerned that asylum-seekers and refugees are detained in Turkey, for reasons not prescribed by international standards and without any procedure for demonstrating the necessity or proportionality of the detention. Persons who may be in need of protection, as well as asylum-seekers and refugees, are commonly held in administrative detention for one of the following reasons: to have their asylum claim determined, to be assigned to a satellite city or to be processed for deportation. There is no procedure to examine the necessity to detain the individual, to examine possible alternatives and no

written notification stating the reasons for the detention is provided. There is also no practical procedure to challenge the grounds of the detention and no control over the detention by a judicial authority.⁸⁸ Furthermore, in many cases, persons who may be in need of protection, asylum-seekers and refugees are held for extended periods of detention without their asylum claim being determined, even though this was the reason for their detention.

According to asylum regulations, people who claim asylum after arrest for irregular entry or attempted exit or irregular status in the country are subjected to an accelerated asylum procedure within five days of detention.⁸⁹ In effect this punishes asylum-seekers for their illegal entry or presence, and represents a violation of the Refugee Convention.⁹⁰ Furthermore, in practice due to the Ministry of the Interior not having the resources necessary to carry out such a procedure, asylum-seekers are on occasions held in detention for months before being released without explanation and without their status being determined, further undermining the case for the necessity of the detention.

Likewise, in the case of persons in detention in order for their deportation to be processed, many persons cannot be deported because no readmission agreement exists with their country of origin or because required resources for the deportation are not available. In many cases persons are released after weeks or months of detention with an order requiring them to leave the country within three months.⁹¹

Amnesty International was also told that persons appealing a negative asylum decision to the Administrative Court or applying to the ECtHR to prevent forcible return were also increasingly detained after submitting the applications.

4.3.3 LACK OF LEGAL PROTECTIONS

Amnesty International is concerned that many of the violations of the rights of refugees and asylum-seekers in detention stem from the lack of legal protection in national law for persons in administrative detention. Asylum-seekers and refugees held in administrative detention in foreigners' guest-houses are regarded as under administrative supervision (*idari gözetim*) rather than detention. In practice this results in asylum-seekers and refugees being unfairly denied the legal protections applicable to all persons in detention provided under international law. Irrespective of national law categorizations, individuals hold rights under international law as highlighted above, including the right to be free from arbitrary detention and protections if detained. Holding persons against their will for an extended period when it is not necessary or proportional amounts to a breach of the prohibition against arbitrary detention. In addition regional law reinforces these protections including the requirements of the right to liberty and security of the person enshrined within the ECHR.⁹² As such access to lawyers and the ability to challenge the legality of the detention must be granted.⁹³

However, these procedural rights are denied to persons detained in guest-houses. Reasons for the detention in the foreigners' guest-houses and the expected length of the detention are not communicated to detainees. There is no maximum period of administrative detention specified in law.⁹⁴ In many cases access to lawyers is not granted on the basis that lawyers lack the necessary previous authorization, or locally the power of attorney (*vekaletname*), to act on behalf of the individual. Likewise, NGOs supporting the rights of refugees are denied permission to meet with refugees and permission is often not granted to the UNHCR to visit those held at the foreigners' guest-houses. No facility exists for detainees in foreigners'

guest-houses to challenge the legality of their detention.

4.3.4 CONDITIONS OF DETENTION

Amnesty International received reports of detainees being subject to torture and other ill-treatment by law enforcement officials contrary to Turkey's obligations under the ICCPR and ECHR.⁹⁵ These allegations relate both to detention in guest-houses and to persons apprehended and held in gendarmerie detention after irregularly crossing into Turkey through its eastern land borders or after attempting to exit Turkey irregularly from its western coast. Amnesty International also received consistent reports of refugees and asylum-seekers being held in conditions that do not meet international standards applicable to all persons in detention. These standards include the ICCPR and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁹⁶

4.3.5 GENDARMERIE DETENTION

Among persons who spoke to Amnesty International, reports of ill-treatment were especially common from those who were apprehended after irregularly crossing Turkey's eastern borders or while attempting to exit Turkey irregularly from its western coast. Human Rights Watch also documented such allegations regarding gendarmerie detention through extensive interviews with former detainees.⁹⁷ Afghan nationals who spoke to a delegate of Amnesty International alleged that they were punched and kicked in gendarmerie custody after their arrest while they crossed the border irregularly from Iran. They told Amnesty International that they crossed the border three times, each time being apprehended, beaten and returned to Iran before being able to cross the border area. The same individuals reported that they were also arrested and held in gendarmerie detention in western Turkey, in the province of Aydın and that they were again punched and kicked by gendarmerie officers while in detention. The group also claimed that during the period of their detention they were beaten by the gendarmerie in order to extort money and that they received insufficient food during the time that they were in detention, only being given a half a loaf of bread each per day. The group claimed that those who had money were forced to give it to the gendarmerie officers and were then transferred to Istanbul for the purpose of being forcibly returned to Kabul by plane. Amnesty International was told that those who did not have money were released.

4.3.6 GUEST-HOUSES

Conditions in guest-houses, the most common facility for the detention of asylum-seekers and refugees, are also grossly inadequate. In a comprehensive report into detention in guest-houses, Helsinki Citizens' Assembly Turkey reported allegations of torture and ill-treatment including persons being beaten on the soles of the feet, known as *falaqa*, and being made to stand naked in front of other detainees and police officers. The report also found that conditions in the guest-houses were overcrowded and dirty, that insufficient food was provided to detainees and that medical services were inadequate. Another finding was that although men and women were segregated, adults and minors were held together, as were convicted criminal and non-criminal detainees.⁹⁸ Human Rights Watch also reported widespread allegations of ill-treatment and found examples of detention in inhuman and degrading conditions during interviews conducted at the Edirne Tunca and Kırklareli guest-houses.⁹⁹

4.4 REFOULEMENT

The fundamental principle of *non-refoulement* is the prohibition on returning anyone in any manner whatsoever to a country where they would be at risk of persecution or serious human rights abuses. This principle is contained in international refugee law,¹⁰⁰ as well as in international human rights law. A breach of this right can occur in a variety of ways, including directly through forcible returns to the country of origin, indirectly through return to an intermediary country, as well as denying access to the territory or a fair and satisfactory asylum procedure (see section on access to asylum procedure).¹⁰¹

Amnesty International is concerned that in Turkey, in addition to breaches of the *non-refoulement* obligation through denial of access to the asylum procedure as highlighted above, it is also being violated by the authorities through the practice of forcibly returning registered asylum-seekers and refugees.

In some cases forcible returns have taken place after the national authorities have rejected persons who are recognized as refugees by the UNHCR in Turkey or registered asylum-seekers whose status has not been definitively determined by the UNHCR. However, in these cases, although the decision of the Turkish authorities is communicated verbally to the asylum-seekers or refugees, no opportunity is given for an appeal to be submitted and no written notification is given of this decision. As stated above, since no reasoned decisions are given it is also not clear on what basis the national authorities have rejected asylum-seekers' claims, particularly given the inadequacies of the RSD procedure. 'Threats to national security' have also been cited as reasons for forcible returns but similarly, such conclusions appeared to have been taken arbitrarily and without written notification or opportunity to appeal the decision. Failure to comply with administrative procedures such as reporting requirements has also resulted in asylum-seekers being forcibly returned in violation of the principle of *non-refoulement*. All such forcible returns of UNHCR registered asylum-seekers and refugees to places where there is a genuine risk that their human rights will be violated are acts of *refoulement*, whether failure to comply with administrative regulations or negative asylum decisions by the national authorities are given in justification.

Forcible returns are conducted both officially, that is where persons are returned to another state authority after passing through official border crossing points, and irregularly, by forcing persons to cross the border outside official border posts. This latter practice raises even greater concerns: not only does the forcible return itself put the refugee or asylum-seeker at risk of human rights violations, but also the way the return occurs is dangerous and exacerbates the vulnerability of asylum-seekers in transit. This has led to violations of the rights to life and not to be subjected to torture or other ill-treatment.

Refoulement of registered asylum-seekers and refugees has commonly been to the neighbouring countries of Iran and Iraq with whom Turkey shares a land border. A lesser number of forcible returns have also taken place over the land border with Syria. Forcible returns to these countries have included nationals of these states but also frequently involve third country nationals who are at risk of serious human rights abuses in the country where they are deported to and additionally risk being further deported to their country of origin. NGOs also reported that the number of forcible returns being conducted by the authorities increased in 2008.

On 22 August 2007, five Iranian refugees recognized by UNHCR in Ankara were forcibly returned to Iraq. The deportation by the Turkish authorities was conducted without any legal procedure being followed and UNHCR was not notified of the decision. The UNHCR learnt that the refugees were detained for more than a month after being forcibly returned to Iraq.¹⁰² An official from the Van Directorate of Security acknowledging the deportation told Amnesty International that the five refugees were deported because they represented an (unspecified) threat to national security.¹⁰³

In an example of the irregular forcible returns conducted by Turkish authorities, in April 2008 four people drowned after a group of 18 people including refugees and others were forced to swim across the Tigris river dividing Turkey and Iraq after Iraqi authorities refused to accept them into their territory.¹⁰⁴ An appeal by human rights NGOs calling on the authorities to investigate the forcible return and to make public the results was not addressed by the authorities.¹⁰⁵

The forcible return on two occasions of a group of UNHCR recognized Uzbekistani refugees in September and October of 2008 illustrates the Turkish authorities' increased flouting of both international *non-refoulement* obligations and the procedures of national law in the case of forcible returns. On 12 September, 24 Uzbekistani refugees, 15 of them children, were forced into Iranian territory by Turkish law enforcement officials. It was alleged that officials had persuaded the group to come to the Van Directorate of Security in order that stationary would be provided for the children's education. Commenting to the press on these allegations, a senior official within the Van Directorate of Security was quoted as saying that the group was not complying with reporting requirements and that although the police methods may differ from others, the method of getting the refugees to the station did not matter.¹⁰⁶ During this deportation, members of the group were allegedly beaten by security officials and women and girls were threatened with rape unless they left Turkey. The refugees were subsequently held hostage by an unnamed group in Iran which threatened to kill them. They were released after a week following the payment of a ransom of US\$5,000. They then returned irregularly to Turkey.

Amnesty International issued an urgent appeal for the group not to be forcibly returned a second time when they were apprehended following their return to Turkey, and calling on the authorities to investigate the circumstances of the first forcible return.¹⁰⁷ Despite this, and the efforts of human rights organizations in Van, the group was forcibly returned to Iran for a second time. On 11 October 2008, the 24 Uzbekistani nationals are believed to have been rounded up by police in Van and taken to an unknown location. On 13 October, the UNHCR in Turkey confirmed that the group had been deported to Iran.¹⁰⁸ On 22 January 2009 a group of human rights advocates issued a statement stating that the group had been living in appalling conditions close to the border in the mountains of north-western Iran after being denied permission to pass Iranian customs. According to the statement, the children members of the group in particular risked death due to starvation and hunger.¹⁰⁹

4.5 RESETTLEMENT

Citing the reservation to the Refugee Convention, Turkey requires all non-European refugees to be resettled outside of Turkey. There is currently no option for non-European refugees to be locally integrated in Turkey. Currently the countries resettling the most refugees from Turkey are Australia, Canada, Finland and the United States. Some 2,700 refugees were

resettled from Turkey in 2007.¹¹⁰ In a significant number of cases, however, individuals accepted for third country resettlement have been refused exit permission by the Turkish authorities, preventing or delaying resettlement. Exit permits are often refused for one of three reasons: that there are outstanding fines due because refugees had not regularized their status including complying with reporting requirements and purchasing residence permits; that their claim has been rejected by the Turkish authorities but accepted by UNHCR; or that for unknown reasons permission is not granted but without notification of any kind.

In the first case, which is the most common, refugees are refused exit permission due to outstanding overstay fines. These fines relate to the time they and their family stayed in Turkey without complying with reporting requirements in the designated satellite city in order to regularize their residence status. Given the long time from registration to recognition as a refugee, taking between two and 10 years, overdue fines can amount to thousands of Euros. Refugees in the vast majority of cases have no means with which to pay these fines and as a result many are refused permission to exit Turkey or at a minimum experience a significant delay before their resettlement can be processed.

In the second case, of UNHCR recognized refugees who have been rejected by the Turkish authorities, many of them had their claims rejected at first instance and on appeal by UNHCR but were later recognized after their cases were re-opened following the provision of new information. In a small number of cases it was reported that UNHCR refugees had been served with deportation orders despite being recognized by the UNHCR at first instance or on appeal. In the third instance, exit permission was refused for unknown reasons although no deportation letter was issued. The fact that no notification of a decision to reject or accept a refugee is given by the authorities makes the situation especially difficult to challenge. In each case the practical outcome is that the refugee cannot benefit from international protection and in the case that deportation orders are issued, is at direct risk of *refoulement*.

GROUPS DENIED RESETTLEMENT: 1,204 KURDISH REFUGEES FROM IRAN AND OTHERS

Exit permission has been denied by Turkish authorities to some specific groups in Turkey preventing their resettlement to third countries. Of these, in particular a group of some 1,200 Iranian Kurdish refugees have remained in Turkey waiting for resettlement since they arrived in Turkey from Northern Iraq between 2001 and 2003.

The group originally claimed asylum in Northern Iraq but were not able to be resettled and could not be provided with effective protection in Northern Iraq due to the deteriorating security situation.¹¹¹ Since they could not access a durable solution in Northern Iraq, and also because of low security in the region even before the US invasion of Iraq¹¹², the refugees fled to Turkey via Iran or directly from Northern Iraq.

While the group of Iranian Kurdish refugees who came from Iraq have been recognized as Convention refugees by UNHCR in Turkey, as well as by UNHCR in Northern Iraq, the Turkish authorities have treated this group in a different way from other refugees and have refused the vast majority of them permission to resettle in a third

country and even deported members of the group in violation of the principle of *non-refoulement*. Members of this group have also been made to sign statements by the Turkish police accepting that they will not be treated like other refugees in Turkey but as “foreigners”; that they will be given temporary residence permits under which they risk *refoulement* to Iran if they cannot renew these permits or if they act in a way “contrary to public order, public health, general morality or national security”; that permission will not be given to allow them to be resettled in third countries; and that they shall not benefit from any state medical support. Local lawyers have been informed by the Ministry of the Interior that the measures are necessary “in order to discourage the coming of other foreigners of Iranian origin to our country”.¹¹³

One member of the group, A.P., was forcibly returned to Iraq along with his wife and son in October 2007. They had been living in Turkey since November 2002 and had been recognized as refugees by the UNHCR in Turkey in 2003 after previously being recognized by the UNHCR in 1999. However, due to the Turkish authorities’ refusal to recognize the family as refugees, they were detained and then deported to Iraq. In a letter delivered to the UNHCR office in Ankara on 18 October 2007, the Turkish authorities said they refused the application for A.P. and his family to remain in Turkey, either in their own right or as part of the group of Iranian refugees who have permission to reside in Turkey. A.P. told Amnesty International that he was forcibly returned to Iraq on 19 October 2007, along with his wife and son. He claims that the Turkish authorities threatened to send them to Iran instead, and forced him to sign a document in Turkish that he could not read. All three were detained on arrival in northern Iraq. His wife and son were released after two days, while A.P. was held for 20 days. A.P. also told Amnesty International that after the family returned to Turkey in February 2008 he was arrested in the eastern city of Muş and was again forcibly returned to northern Iraq, on 16 March, on the orders of a court in Muş despite telling the court that he had been recognized as a refugee in Turkey. In the absence of any opportunity to be resettled to third countries or effective protection in Turkey, Amnesty International has learnt that many members of the group have been compelled to leave Turkey irregularly for countries within the EU; those that remain in Turkey are those not able to leave through irregular means including elderly infirm members of the group.

Other groups

Other groups within Turkey face the prospect of being denied resettlement and denied international protection within Turkey, creating an increased risk of forcible return. In 2008 another group of Iranians, former members of the People’s Mojahedin Organization of Iran, began to arrive in Turkey after the authorities in Iraq refused to allow them to stay at their camp in Baghdad.¹¹⁴ A lawyer working on behalf of members of the group told Amnesty International that the Turkish authorities detained, ill-treated then irregularly returned members of the group while six other members of the group were prevented from being forcibly returned by an interim measure from the ECtHR.¹¹⁵ The situation also remained uncertain regarding other groups who may not be eligible for resettlement. As of March 2009, there was no agreement between the Turkish authorities and the UNHCR regarding Iraqi refugees from south and central Iraq recognized as a group (*prima facie*) by the UNHCR in Turkey or other asylum-seekers recognized as being in need of international protection under the extended mandate of the UNHCR, leading to concerns that these groups may be subjected to the same fate as the Iranian Kurdish refugees.

5. RECOMMENDATIONS

To the Turkish Authorities

General Recommendations

- Lift the geographical limitation to the Refugee Convention;
- Bring into force comprehensive national asylum legislation consistent with international standards on protection and reception to protect the rights of all refugees, asylum-seekers and other persons who may be in need of protection, without discrimination, within Turkey's jurisdiction;
- Establish a meaningful dialogue with refugee assisting associations and the UNHCR in the drafting and implementation of all primary and secondary legislation with an impact on refugees, asylum-seekers and persons who may be in need of protection.

On access to the refugee status determination procedure

- Ensure that all persons who may be in need of protection within Turkey's jurisdiction, both within its territory and at its borders, are given access to a fair and effective refugee status determination procedure. To achieve this the Turkish authorities should:
 - Ensure that all persons who may be in need of protection are provided with information on the asylum procedure in a language that they understand and that they are given access to legal counsel;
 - Receive and log immediately, all asylum applications, oral or written, with the assistance of trained interpreters if necessary. All asylum applications should be presented to a competent central decision-making body that is independent and specialized;
 - Train all relevant state officials in their obligations to receive asylum applications. Cases of state officials refusing to receive asylum applications and/or failing to transfer them to a competent authority should be promptly and effectively investigated;
 - Establish a monitoring procedure in partnership with refugee assisting associations and the UNHCR to monitor the access of persons who may be in need of protection to the territory of the country and to the asylum procedure.

On the refugee status determination procedure

- Ensure that there are adequate procedures in place to identify asylum-seekers who would risk persecution if forcibly sent to another country. To achieve this the authorities

should:

- Legislate for and implement a national refugee status determination procedure with procedural guarantees adequate to fulfil obligations to asylum-seekers in line with international refugee standards (see Appendix 2 for list of guarantees);
- Respect the decisions of the UNHCR in granting refugee status to non-European asylum-seekers;
- Ensure that asylum-seekers are not returned to their country of origin, or any other country in respect to which they claimed persecution, unless their claim for protection has been substantively examined and rejected on appeal following a full and fair refugee status determination procedure; all such returns must be done in safety and dignity for the returned individual.

On *Refoulement*

- Protect refugees recognized by UNHCR against refoulement;
- Ensure that any person in need of international protection, including any person excluded from refugee status, is not forcibly returned to a place where they are at risk of serious human rights abuses, and establish the necessary procedures to examine their claims.

On the reception of refugees and asylum-seekers

- Ensure that asylum-seekers and refugees reside in adequate conditions consistent with international standards on reception. To achieve this the authorities should:
 - Ensure that any restriction of an individual's rights to liberty and freedom of movement meets relevant principles of international law, including the principles of necessity and proportionality;
 - Ensure that the requirements for refugees and asylum-seekers to reside in a satellite city do not impose an unduly heavy burden on the individual, and do not prevent individuals from exercising their other human rights, including the rights to health, education, work and adequate housing; as such, no such requirement should be imposed if they unduly restrict these rights;
 - Ensure that asylum-seekers and refugees have access to state health and education services, as well as adequate housing;
 - Facilitate the process for refugees and asylum-seekers to obtain work permits;
 - Abolish charges for residence permits required to access services for all refugees and asylum-seekers, with a view to facilitate the process;
 - Ensure that reporting requirements are not excessively difficult to comply with and

are not unnecessarily or disproportionately restrictive of liberty or privacy, taking into account the particular circumstances of the individual, such as their family situation, residential situation and financial means;

- Develop reporting requirements that are sensitive and tailored to the particular situation of irregular migrants and asylum-seekers, as well as including supervision by a community organization or other community support arrangements;
- Take active measures, through local government structure and with the participation of civil society organizations, to encourage the integration and acceptance of refugees and asylum-seekers in local communities.
- Ensure that all relevant state officials receive training on sensitivity to refugees and asylum-seekers including victims of torture, unaccompanied minors, and lesbian, gay, bisexual and transgender refugees and asylum-seekers.

On the detention of refugees and asylum-seekers

- End the practice of detention of refugees and asylum-seekers for immigration purposes, in line with international human rights standards which required that such detention is only used in the most exceptional circumstances (see Appendix 1);
- Establish a presumption against detention by law;
- Ensure that a range of alternative non-custodial measures, such as reporting requirements, are available and accessible;
- Ensure that other less restrictive alternatives to detention are always considered first and given preference before resorting to detention, only resorting to detention if it is established that no alternative will be effective in achieving the legitimate aim;
- In situations where detention is unavoidable, and has proven to be necessary on the basis of an individual assessment of each case, ensure that refugees and asylum-seekers are held in adequate conditions and granted access to all procedural rights as defined under international law and standards (see Appendix 1);
- Ensure that penalties for unauthorized entry or stay, including detention, are not imposed on refugees and asylum-seekers who present themselves without delay to access asylum procedures and who show good cause for their irregular entry or presence, such as the necessity of unauthorized entry;
- Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent national body to carry out regular and ad-hoc unannounced visits to all places of detention including foreigners' guest-houses, airport detention facilities and other places where refugees and asylum-seekers are held.

On resettlement

- Until such a time as legislation is passed to allow for the integration of all refugees in Turkey, facilitate the prompt resettlement of all refugees accepted by third countries;
- Cooperate with UNHCR, third countries and implementing agencies to facilitate resettlement of refugees from Turkey;
- End the requirement for refugees to obtain exit permission, which effectively restricts refugees from accessing resettlement in third countries;
- End the requirement for refugees to pay overstay fines before leaving the country, which can represent a financial burden on them and can prevent them from obtaining resettlement.

To the European Union and its member states

- Establish a refugee resettlement programme or expand existing ones in the spirit of burden and responsibility sharing;
- Assist Turkey in ensuring that the rights of persons in need of international protection are respected. To achieve this the EU and its member states should;
 - Grant further technical assistance to Turkey in improving reception and protection standards;
 - Suspend returns of asylum-seekers who have transited through Turkey until such time as reception and protection standards meet international standards and offer adequate protection from refoulement and a real possibility for local integration;
 - Assess the resettlement needs for vulnerable refugees from Turkey.

6. APPENDICES

APPENDIX 1: AMNESTY INTERNATIONAL'S POLICY ON THE DETENTION OF REFUGEES AND ASYLUM SEEKERS

Amnesty International is opposed to the detention of refugees and asylum-seekers apart from in the most exceptional circumstances as prescribed by international law and standards. Detention will only be lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international and regional standards recognize as legitimate grounds for detaining asylum-seekers. Amnesty International also opposes the detention of people who have claimed asylum and whose claims have been rejected by the authorities, unless, for example, the detaining authorities can demonstrate that there is an objective risk that the individual concerned would otherwise abscond, and that other measures short of detention, such as reporting requirements, would not be sufficient. Anyone held in detention must be promptly brought before a judicial authority and be provided with an effective opportunity to challenge the lawfulness of the decision to detain him or her. Detention should also be for the shortest possible time. Should government authorities continue to operate a policy of detaining people who have sought asylum, Amnesty International urges, at minimum, the following recommendations be adopted:

- there should be a presumption against detention provided by law;
- alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention (see below for Amnesty International's policy on Alternatives to Immigration Detention);
- criteria for detention should be clearly set out on a legal basis;
- the decision to detain should always comply with relevant international standards pertaining to the lawfulness of detention;
- the decision to detain should always be based on a detailed and individualized assessment, including the personal history of, and the risk of absconding presented by, the individual concerned. Such assessment should consider the necessity and appropriateness of detention, including whether it is proportionate to the objective to be achieved;
- each decision to detain should be automatically and regularly reviewed as to its lawfulness, necessity and appropriateness by means of a prompt, oral hearing by a court or similar competent independent and impartial body, accompanied by the appropriate provision of legal assistance;
- detainees have the right to be informed of the reason for their detention in writing in a

language which they understand;

- detention should always be for the shortest possible time and must not be prolonged or indefinite;
- there should be a maximum duration for detention provided by law which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released;
- there should be a prohibition provided by law on the detention of vulnerable people who have sought asylum, including: torture survivors, pregnant women, those with serious medical conditions, the mentally ill and the elderly;
- there should be a prohibition on the detention of unaccompanied children provided by law;
- there should be a prohibition provided by law for those who have sought asylum at some stage and who are held solely under immigration-related powers to be held in prison;
- any allegations of racism, ill-treatment and other abuses of those held in detention should be investigated immediately in compliance with relevant international standards and those responsible should be dealt with appropriately, including when warranted, by disciplinary or penal measures as appropriate;
- people who have sought asylum and are detained should be granted access to legal counsel, interpreters, doctors, refugee assisting organizations, members of their families, friends, religious and social assistance in addition to the United Nations High Commissioner for Refugees (UNHCR);
- those detained should have access to appropriate health care and psychological counseling where appropriate.

ALTERNATIVES TO IMMIGRATION DETENTION

Any restrictions on the rights to liberty and to freedom of movement for the purpose of immigration control, such as detention or alternative non-custodial measures should only be used when necessary and proportionate to the objective of preventing absconding, to verify identity or ensure compliance with a deportation order. There should be a presumption against detention established by law. Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention. Recognized refugees and migrants with a regular status should never have their rights to liberty or freedom of movement restricted for immigration purposes.

OBLIGATION TO PROVIDE ALTERNATIVES

States must ensure that alternatives to detention are available and accessible to irregular migrants and asylum-seekers, in law and in practice.

States must, in each individual case, consider and use less restrictive alternatives to detention only resorting to detention if it is established that no alternative will be effective in

achieving the intended purpose.

In considering alternatives to detention states must take full account of individual circumstances and those with particular vulnerabilities including children, pregnant women, victims of trafficking, the elderly, or those with serious medical conditions.

In considering alternatives, states must bear in mind that unaccompanied children and victims of trafficking should not be detained.

APPLICATION OF ALTERNATIVE MEASURES

The application of alternative measures must respect the individual's dignity, and must comply with the principles of legality, necessity and proportionality, and non-discrimination. Alternative measures must also be subject to judicial review.

Alternatives must be provided for in law, which should define each available measure and the criteria governing their use, as well as specifying which authorities are responsible for their implementation.

The alternative measure applied in any particular case must be that which is the least restrictive of the human rights of the individual concerned, that is, where no less intrusive or restrictive means will achieve the same objective.

States must take into account the particular situation of migrants and asylum-seekers, as well as the particular vulnerabilities of certain groups, to ensure that the application of alternatives measures does not result in discrimination against particular groups of non-nationals, whether on the basis of their nationality, religion, economic situation, immigration or other status.

To safeguard against arbitrary application, an effective right to have the legality, necessity and appropriateness of the alternative measures reviewed by an independent judicial or other competent authority must be available.

REGISTRATION AND DOCUMENTATION REQUIREMENTS

The registration of migrants and asylum-seekers and providing them with official registration documents can be effective measures towards monitoring the whereabouts of non-nationals and towards ensuring they are not subjected to arbitrary detention in host and transit countries.

States must ensure that measures such as the production of identity documents for the purpose of verifying identity in the course of ordinary asylum proceedings do not obstruct an individual from accessing their rights to adequate housing, healthcare, and education or otherwise place them in a vulnerable situation.

REPORTING REQUIREMENTS

States must ensure that monitoring or reporting requirements are not excessively difficult to comply with or restrictive of liberty or privacy, taking into account the particular circumstances of the individual, such as their family situation, residential situation and financial means.

States should develop reporting requirements that are tailored to the particular situation of migrants and asylum-seekers, as well as including community supervision and support.

BAIL, BOND AND SURETY

States must ensure access to bail, bond and surety without discrimination against particular groups of non-nationals, for example on the basis of their nationality, ethnic or other origin, economic situation, or immigration or other status. In particular, states should not deny bail, bond or surety solely on the basis that a person has entered or remains on the territory irregularly.

Conditions attaching to the grant of bail or release on bond or surety must be reasonable, and must not create an excessive or unrealistic burden on the individual.

Bail, bond and surety must be available in practice to migrants and asylum-seekers, who should not be disadvantaged by their lack of family ties or limited financial means. To ensure this, states should establish flexible arrangements for monitoring and supervision with civil society groups or community shelters, or other innovative arrangements, taking into account their particular situation.

OPEN AND SEMI-OPEN CENTRES, DIRECTED RESIDENCE

Where states use measures such as open and semi-open centres, directed residence and restrictions to a specified district as an alternative to detention, they must ensure that the restriction of individuals' right to liberty and freedom of movement meets the general principles of international law, including the principles of necessity and proportionality.

States must ensure that the use of such measures, whether with or without additional reporting requirements, does not prevent individuals from exercising their other human rights, including the right to health and education.

ELECTRONIC MONITORING

As an alternative to immigration detention, electronic monitoring should not be used as a default measure against irregular migrants who would not otherwise be detained. It must only be used to achieve a legitimate objective, and applied in accordance with relevant international legal principles.

Electronic monitoring should be used only after a careful assessment of the extent to which the specific measure will restrict the human rights of the individual, as well as its proportionality and necessity to fulfil a legitimate objective, and used only if, and for so long as, there is no less restrictive measure likely to achieve the same objective.

It must be subject to review by an independent judicial or other competent authority, to ensure that its application is necessary and proportionate for the legitimate stated purpose at that particular time, and is not discriminatory, arbitrary or unduly prolonged.

APPENDIX 2: PROCEDURAL STANDARDS IN REFUGEE STATUS DETERMINATION

Amnesty International seeks to ensure that states' asylum procedures, including the procedures and practices followed at their airports and borders, are adequate to identify asylum-seekers who would risk serious human rights violations if sent against their will to another country.

Amnesty International calls on all governments to observe certain basic principles in their asylum procedures. These principles are essential in helping to prevent the forcible return of asylum-seekers at risk of serious human rights violations. In order for states parties to the Refugee Convention to fulfil their obligations towards asylum-seekers, Amnesty International believes that their asylum systems must guarantee the following:

1. Access to procedures: Access to a fair and satisfactory/effective asylum procedure should be granted to all asylum-seekers under a member state's jurisdiction, both within its territory and at its borders. This includes ensuring that immigration officials present all asylum applications to the competent central authority.
2. Decision-making authority: The asylum claims should be determined by a decision-making body that is independent and specialized, and provided with objective, independent, and relevant information on the countries of origin, or any countries where the applicants might be sent.
3. Decision-maker: Every asylum claim, whether submitted on arrival or after entry into the country, should be carried out by a fully qualified official of the responsible body, who should interview the applicant personally. Applicants should be interviewed by a person of the same gender if they so wish.
4. Examination of applications: Every asylum application should be examined thoroughly and individually on all the circumstances of the case. The applicant should be able to present their case, and submit evidence, in a personal appearance before the decision-maker.
5. Access to legal counsel: Asylum-seekers should have access to effective legal counsel, UNHCR and appropriate NGOs, and should be made aware of this right
6. Access to interpretation: Applicants should have access to a competent, qualified and impartial interpreter through all stages of the asylum procedure. They should have access to an interpreter of the same gender if they so wish.
7. Rights to confidentiality: An applicant has right to confidentiality at all stages of the asylum process, including the fact of the application for asylum itself.
8. Reasonable time to prepare a case: Taking into account the proof required in making an asylum-claim, applicants should be given a reasonable amount of time to prepare their case and seek legal and other advice.
9. Benefit of the doubt: It is not always possible for asylum-seekers to prove every part of their case with supporting evidence and so it is often necessary to give the applicant the benefit of the doubt.

10. Reasoned decisions: Where a first instance asylum claim is rejected, applicants should be provided with clear and comprehensive reasons for the decision, which are fully in-line with procedural safeguards for fair and due process and which allow the applicants to effectively exercise their right to appeal to its full extent.

11. Equality in access to evidence: Providing an asylum-seeker the full right to argue his/her case for asylum in a fair hearing requires the applicant be able to rebut any evidence used against him/her:

- As a general rule, applicants should have access to copies of all documents used to decide their asylum claim;
- Where an individual assessment of a risk of danger posed by disclosure reveals a security concern, alternatives to disclosure must be considered before using evidence withheld from an applicant where the it would result in a negative decision:
 - If the risk is to the applicant him/herself, the applicant should be informed of the situation and the extent of the risk, and then be allowed to choose;
 - If the risk is to the RSD authority and other third parties, then anonymous disclosure should be the first option;
 - If anonymity would not abate the security threat, as assessed on a case-by-case basis by a qualified and expert authority, then the RSD authority should consider not using the evidence in making its decision. Without the applicant's ability to rebut and respond to the evidence, the quality and legitimacy of the information is put into question. Refugees come from an oppressive situation where they face an individual risk, so their explanations and evidence could easily be unique to any official or outside understanding.

12. Right to an effective appeal: Every applicant should be given a reasonable time to appeal his/her asylum decision before a competent and independent authority and should be given the right to stay during the appeal procedure. In order to fulfil the requirements of fairness and avoid a breach of *non-refoulement*, the asylum procedures should guarantee that:

- The appeal is conducted by an independent body different from that which made the initial decision and which is either a judicial authority or a higher administrative authority,
- Appellants have a personal interview to allow an in-person opportunity to present their case and for the authority to make a personal assessment.
- The appeal procedure should include an examination of the merits of the individual case and all the relevant facts, including new relevant facts may come to light.
- The appeal authority provides clear and comprehensive reasons for the decision in case of a negative decision.

ENDNOTES

¹ For stateless persons, the Refugee Convention uses the term “country of his[her] former habitual residence”.

² 1951 Convention relating to the Status of Refugees (the Refugee Convention), Article 1. A.

³ Article 1.3 of the 1967 Protocol states “The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article.B(1)(a) of the Convention, shall, unless extended under Article.B(2) thereof, apply also under the present Protocol.”

⁴ *UNHCR Handbook on Procedures and Criteria for the Determination of Refugee Status* (RSD Handbook), 1992, para. 28.

⁵ The International Labour Organization (ILO) has noted that “[P]eople who enter or work in countries without legal authorization have been labelled illegal, clandestine, undocumented or irregular. ‘Illegal migrants’ has a normative connotation and conveys the idea of criminality.” ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, 2004. For this reason, Amnesty International does not use the term “illegal migrant”.

⁶ The definition of *refoulement* itself is complex, but it can be simplified as the forcible return of an individual to a country where they would be at risk of serious human rights abuses.

⁷ Implementation Directive, Ministry of the Interior, 22 June 2006

⁸ For an explanation of the geographical limitation, see “The Refugee Convention and its temporal and geographical limitations” under Definitions

⁹ *UNHCR Asylum Levels and Trends in Industrialized Countries 2008* available at <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf> Numbers refer to the number of asylum-seekers rather than the number of casefiles.

¹⁰ *UNHCR Global Report: Turkey* available at <http://www.unhcr.org/publ/PUBL/484921ee2.pdf> Persons of concern to the UNHCR in Turkey include refugees, asylum-seekers and returnees

¹¹ Website of the Head of the Turkish Armed Forces

¹² Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of 14 December 1950, *entry into force* 22 April 1954. Turkey ratified the Refugee Convention on 30 March 1962 and acceded to the 1967 Protocol on 31 July 1968 (from http://www.unhcr.org/protect/INTERNATIONAL_PROTECTION/3b73b0d63.pdf). For an explanation of Turkey’s ratification of the Refugee Convention see “the Refugee Convention and its temporal and geographical limitations” under Definitions.

¹³ Article 1.B of the Refugee Convention

¹⁴ This point is disputed. Officials from the MOI told Amnesty International that Turkey had not recognized any person as a refugee. However, official statistics have claimed that 43 people have been recognized as refugees. Refugee assisting organizations have not been able to verify this figure.

¹⁵ Regulation No. 1994/6169 on the Procedures and Principles related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country, and Implementation Directive of the General Directorate of Security 22 June 2006 numbered B.05.1.EGM.O.13.03.02/16147 71810-12/Gnl.D.6-6

¹⁶ i.e. with authorization under domestic law

¹⁷ The 81 governorates are the main structures of central government's provincial administration.

¹⁸ i.e. without authorization under domestic law; however, such entry may be permissible under international refugee or human rights law

¹⁹ Asylum Regulation Article 4

²⁰ Implementation Directive, sections 7, 8 and 9

²¹ Asylum regulation, Article 6

²² Article 14.1 of the Universal Declaration of Human Rights: Everyone has the right to seek and to enjoy in other countries asylum from persecution.

²³ Law of Settlement 1934 No.2510, Article 3 provides for the integration of persons of Turkish origin as migrants. Under this law some persons fleeing persecution have been allowed to remain in Turkey on the grounds of their origin rather than their need for international protection.

²⁴ Court documents seen by Amnesty International but names withheld on the request of the applicants.

²⁵ Implementation Directive, Employment of Personnel

²⁶ Asylum Regulation, Article 2 makes reference to persons who arrive in the country.

²⁷ See e.g. Human Rights Committee, *General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant* U.N. Doc. CCPR/C/21/Rev.1/Add.13, 21 April 2004, para 10. In the ECHR see, *inter alia, Bankovic and others v Belgium*, Application no. 52207/99, where the European Court of Human Rights reiterated the understanding of jurisdiction as focussed on control of the individual and covering both territorial and extra-territorial situations. Whilst the European Court has found that Article 1 jurisdiction is essentially territorial, the possibility to extend jurisdiction extra-territorially was recognized, including: "recognised instances of the extra-territorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have recognised the extra-territorial exercise of jurisdiction by the relevant state." (para. 73). In line with European Court's findings in *Loizidou v. Turkey* and *Cyprus v. Turkey* jurisdiction is also established where a state exercises "effective control of an area outside its national territory" (para. 70); "Recognition of extra-territorial jurisdiction by a Contracting State is exceptional; it [is appropriate] when the respondent State, abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government." (para. 71).

²⁸ See UNHCR Executive Committee Conclusions No. 22 (XXXII) – 1981, No. 81 (XLVIII) – 1997, No. 82 (XLVIII) – 1997, No. 85 (XLIX) – 1998 and No. 99 (LV) – 2004

²⁹ UNHCR believes that Iraqis from South and Central Iraq should be granted refugee protection or a complementary form of protection. See *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, August 2007 and *UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, December 2006 In line with UNHCR's position, Amnesty International believes that all individuals from southern and central Iraq should be granted refugee status or a complementary form of protection. Regarding Iraqis from the Kurdistan region of Iraq Amnesty International calls on states to:

Ensure that all asylum-seekers from the Kurdistan Region of Iraq have access to a full and fair asylum process;

In the event Iraqis from the Kurdistan Region of Iraq do not qualify for refugee or complementary protection, Amnesty International calls on states to grant them temporary humanitarian protection until the status of Kirkuk has been finally and peacefully resolved and it is otherwise safe for them to return.

³⁰ Interview with officials from the MOI Directorate of Foreigners, Borders and Asylum 11 February 2008

³¹ See *Amur v. France*. Application no. 30240/96, Judgment, 25 June 1996. The ruling held that responsibilities of the state are engaged in cases of expulsion from international transit zones.

³² *Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners Guesthouses*, Helsinki Citizens' Assembly Refugee Advocacy and Support Program. Full text of the report is available at <http://www.hyd.org.tr/?pid=610>

³³ Passport Law (no. 5682) Articles 34, 35; Law on the Sojourn and Movement of Aliens (no. 5683) Article 25

³⁴ See section on detention under Rights of Asylum-Seekers. For Amnesty International's position on the detention of refugees and asylum-seekers, see Appendix 1.

³⁵ Refugee Convention, Article 31. While Turkish regulations provide that asylum-seekers should not be penalized for illegal entry, in practice this remains the case, due to persons being regarded by the authorities as illegal migrants rather than asylum-seekers if apprehended before making an application for asylum.

³⁶ For UNHCR's position on returns of Iraqi asylum-seekers see *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, August 2007, and *UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, December 2006.

³⁷ Amnesty International considers that it is currently premature, while the status of Kirkuk has yet to be finally and peacefully resolved, to return any individual from the Kurdistan Region of Iraq to that Region, even when such individual has been found not to be in need of international protection, following full and fair asylum procedures, and after having had their asylum claim rejected in a final appeal and having been found not eligible for complementary forms of protection. Even when the status of Kirkuk has been finally resolved and peaceful conditions prevail, states should return such individuals to the Kurdistan Region of Iraq only when all of the following conditions apply:

- The individual must have a close and enduring link with the Kurdistan Region of Iraq that can provide them with a reasonable opportunity to re-integrate;
- No one should be returned to a situation where they would become internally displaced;
- Returns should be orderly and must take into account the capacity of the Kurdistan Regional

Government to assist returnees in re-integrating;

- Returning governments should take due account of the effect that large scale returns could have on the stability of the Kurdistan Region of Iraq given its limited absorption capacity, in particularly with regard to housing.

³⁸ Joint press release by Amnesty International Turkey and Helsinki Citizens' Assembly, "Illegal deportation of asylum-seekers in Turkey must stop", <http://www.hyd.org.tr/?pid=510>

³⁹ "UNHCR deplors forced return of 135 Iraqis by Turkey", <http://www.unhcr.org/news/NEWS/46a8aec30.html>

⁴⁰ Interview with officials at Van Directorate of Security, 11 February 2008

⁴¹ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, states in its Principle 14: "A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to ... have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest." Principle 17 states that: "a detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."

⁴² The Criminal Procedure Code (Article 150) requires that a lawyer be provided only in the case of investigation and prosecution of offences carrying a prison sentence of more than five years.

⁴³ *Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners Guesthouse*, p.27.

⁴⁴ *Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners Guesthouses*, p.27.

⁴⁵ Interview with Afghan persons who may be in need of international protection, Izmir, 6 February 2008

⁴⁶ Interview with officials at Van Directorate of Security, 11 February 2008

⁴⁷ Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), General Assembly Resolution 428 (V) of 14 December 1950, Ch.1 para.1: "The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities." See also UNHCR, *RSD Handbook*, supra n 1, at para. 18.

⁴⁸ UNHCR Turkey's own RSD procedures have been criticized for failing to meet standards in some areas. For more information see Helsinki Citizens' Assembly Refugee Support and Advocacy Program's report, *An Evaluation of UNHCR Turkey's Compliance with UNHCR's RSD Procedural Standards*. The full text of the report is available at <http://www.hyd.org.tr/?pid=556>

⁴⁹ Regarding the requirement for an independent and specialized body see Amnesty International. *Refugees: Human rights have no borders*. 1997. p. 68; ExCom Conclusion No. 8 (e)(iii): "There should be a clearly identified authority -- wherever possible a single central authority -- with responsibility for

examining requests for refugee status and taking a decision in the first instance”; See also Council of Europe, Committee of Ministers, Recommendation R (81) 16, para.2: “The decision on an asylum request shall be taken only by a central authority.” See also UNHCR *Self-Study Module 2: Refugee: Status Determination. Identifying Who is a Refugee*, (RSD Module) September 2005 at para.5.2.1: “All requests for recognition of refugee status should be examined within the framework of specially established procedures.” Regarding the requirement for a qualified decision maker, see *UNHCR RSD Handbook*, at para. 190: “[A]n applicant for refugee status(’s)... application should... be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs.”

⁵⁰ 2006 Implementation Directive, Negative Decision in the First Instance

⁵¹ It was reported to Amnesty International that Ankara and Van Bar Associations were providing legal assistance to asylum-seekers making judicial appeals to the Administrative Court.

⁵² Interview with officials from the Van Directorate of Security,,11 February 2008

⁵³ See UNHCR Handbook, para. 90: “the application should be assessed with personnel who possess the required knowledge experience and understanding of the applicant’s situation.”

⁵⁴ 2006 Implementation Directive

⁵⁵ The right to an effective remedy for violations of rights guaranteed in the human rights treaties before an authority is guaranteed in Article 2(3) of the ICCPR and Article 13 of the ECHR. An incorrect decision that no Covenant rights were violated leading to the subsequent expulsion of the applicant, thereby denying him/her of his/her right to an effective remedy, would additionally breach these international legal obligations. The right to an effective remedy must therefore include the essential safeguard of the right to an appeal before a competent and independent authority. The right to have his/her asylum claim reviewed before an applicant can be expelled or deported has been explicitly recognized by the Executive Committee in its Conclusion No. 8 on “Determination of Refugee Status”: “If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision.” ExCom Conclusion No.8 (1977) (XXVIII)(e)(vi).

⁵⁶ The right to seek a judicial review of all administrative decisions is protected by Article 125 of the Turkish Constitution.

⁵⁷ Interview with officials from the Department for Foreigners Borders and Asylum, 11 February 2008.

⁵⁸ Information obtained by Amnesty International from the Ministry of the Interior under the Turkish Information Law.

⁵⁹ Interim measures are issued under article 39 of the Rules of the Court. Previous judgments on Turkey that found that the appeal procedure did not represent an effective remedy include *Jabari v. Turkey*, Application No. 40035/98, Judgment of 11 July 2000.

⁶⁰ See Amnesty International Council of Europe: AI observations on the Report of the Working Group on Human rights Protection in the Context of Accelerated Asylum Procedures (GT-DH-AS) 1st meeting, 6-8^t December 2006, for a full statement of Amnesty International’s position on accelerated procedures.

⁶¹ Section 13 of the 2006 Implementation Directive lists the categories as follows:

- Those who applied while he/she should have left Turkey as his/her residence grounds no longer applied (work permit has expired, has completed his/her education, residence permit has expired,

visa-exemption period has expired) while he/she was residing legally with foreigners' status in Turkey;

- Those who lodged an application after it was decided to deport them as he/she committed a crime while residing legally with foreigners' status;
- Those who lodged an application after he/she was caught by security forces because of his/her illegal presence in Turkey;
- Those who had been deported as he/she was involved in illegal migration or committed a crime or entered Turkey despite being prohibited to enter Turkey and wants to lodge an application;
- Those who lodged an application after he/she was caught while trying to exit Turkey illegally,;
- Those who lodged an application while in prison because of a crime he/she committed or after he/she was released;
- Those who previously lodged an asylum application.

⁶² Implementation Directive, Section 13

⁶³ See *Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners Guesthouses*, Helsinki Citizens' Assembly Refugee Advocacy and Support Program.

⁶⁴ Amnesty international was told by NGO representatives that there was just one known case of an asylum-seeker having successfully applied for permission to work.

⁶⁵ For a description of the system of registration and dispersal see Section 2.1: Asylum Regulations

⁶⁶ Amnesty international was told by an official at the Van Directorate of Security that the local authorities planned to introduce a separate identity card for asylum-seekers and refugees that would allow them to access services without the need for a residence permit. If such an identity card were freely and easily available it would represent a major step forward; however at the time of writing there is no evidence that such a system has been implemented in Van or been applied in other satellite cities.

⁶⁷ Implementation Directive, Section 3

⁶⁸ The right is guaranteed by international human rights conventions to which Turkey is a state party. These include International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12; Convention on the Elimination of all Forms of Racial Discrimination Article 5(e)(iv); Convention on the Elimination of all forms of Discrimination against Women Articles 12 and 14(b); Convention on the Rights of the Child Articles 24 and 25; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention) Article 28.

⁶⁹ Implementation Directive, Section 19

⁷⁰ The amended Article 60 of the Social Security and Public Health Insurance Law (no.5510) grants public health insurance to those recognized as asylum-seekers or stateless. However, under the definition used by the Ministry of the Interior, only UNHCR recognized, non-European refugees are regarded as "asylum-seekers" (see Note on Turkish Definitions within the Definitions section). Since the Ministry of the Interior does not issue any documentation indicating that a person is an "asylum-seeker" this provision within the law has no practical use.

⁷¹ ICESCR Articles 13, 14, Children's Convention Articles 28, 29; Convention on Racial Discrimination

Article 5(e)(v); Migrant Workers Convention Article 30.

⁷² ICESCR, General Comment 13 “the right to education (art. 13)”, 21st session, 1999, UN Doc: E/C.12/1999/10, para. 59.

⁷³ These include the ICESCR (Articles 6 and 7); the Women’s Convention (Articles 11 and 14); the Convention on Racial Discrimination (Article 5) and the Migrant Workers Convention Articles 25 and 26

⁷⁴ ICESCR, Articles 6, 2(1) and 2(2).

⁷⁵ Interview with officials from the Van Directorate of Security, 11 February 2008.

⁷⁶ Article 11(1) of the ICESCR guarantees, “the right of everyone to... adequate... housing, and to the continuous improvement of living conditions.” Additionally, Refugee Convention Art 21; Women’s Convention Article 14(2); Children’s Convention Articles 16(1) and 27(3); Convention on Racial Discrimination Article 5(e)(iii).

⁷⁷ General Comment 4 “the right to adequate housing” (Article 11(1)), CESCR, sixth session, 1991, para.8.

⁷⁸ See UNHCR, Recommended Standards on Reception Centres, April 2007; UNHCR, Reception Standards for Asylum Seekers in the European Union (July 2000). See also, European Council on Refugees and Exiles, Position on the Reception of Asylum Seekers (November 2001)

⁷⁹ LGBT individuals in Turkey experience severe discrimination regardless of their citizenship status; see Human Rights Watch report *We need a law for liberation*, 2008.

⁸⁰ Amnesty International interview with asylum-seekers in Van, 9 February 2008

⁸¹ Amnesty International interview in Kayseri, 6 May 2008

⁸² Amnesty International interview in Kayseri, 6 May 2008

⁸³ Afghan national explaining the treatment he and fellow Afghan persons who may be in need of international protection received in gendarmerie detention in the west of Turkey.

⁸⁴ See Section 3: Denial of Access to Asylum.

⁸⁵ Passport Law, Articles 34, 35 and Law on the Sojourn and Movement of Aliens, Article 25 respectively.

⁸⁶ Refugee Convention Article 31.1

⁸⁷ See Amnesty International, *Migration-related detention: A research guide human rights on standards relevant to the detention of migrants, asylum-seekers and refugees*, Index: POL 33/005/2007 November 2007

⁸⁸ See Report of the Working Group on Arbitrary Detention Mission to Turkey A/HRC/4/40/Add.5 7, February 2007, paras. 86-90.

⁸⁹ Implementation Directive, Section 13

⁹⁰ Article 31.1 of the Refugee Convention states: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for

their illegal entry or presence.”

⁹¹ This order is known as a 23 Document (*23 belgesi*) after Article 23 of the Law on the Sojourn and Movement of Aliens on which it is based.

⁹² The ECtHR has examined the intensity and degree of treatment in deciding if it amounts to a deprivation of liberty or a restriction of freedom of movement, *Guzzardi v. Italy* Application no 7367/76, Judgment of 2 October 1980.

⁹³ ECHR, Article Art.5.4

⁹⁴ The 1983 Directive on Refugee Guest-houses, Article 16 states that the period should be temporary

⁹⁵ ICCPR, Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”; ECHR, Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

⁹⁶ ICCPR, Article 10(1): “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.” Principle 3: “There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.” Principle 6: “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

⁹⁷ See, *Stuck in a revolving door: Iraqis and Other Asylum-Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, Human Rights Watch, pp.48 -51, available at <http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-0>

⁹⁸ See *Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners Guesthouses*, Helsinki Citizens' Assembly Refugee Advocacy and Support Program.

⁹⁹ *Stuck in a revolving door*, pp.52-60

¹⁰⁰ Article 33, Refugee Convention

¹⁰¹ In the absence of a *prima facie* recognition procedure

¹⁰² See UNHCR's press release <http://www.unhcr.org/news/NEWS/46f3b3452.html>

¹⁰³ Interview with officials from the Van Directorate of Security, 11 February 2009

¹⁰⁴ UNHCR press release available at <http://www.unhcr.org/news/NEWS/4811e23c4.html>

¹⁰⁵ See http://www.amnesty.org.tr/yeni/index.php?view=article&catid=80%3A%20Amuelteci-haklar-ile-igili-basin-aciklamalari&id=751%3ADicle%E2%80%99de+bo%C4%9Fulan+m%C3%BCltecilerle+igili+ortak+bas%C4%B1n+a%C3%A7%C4%B1klamas%C4%B1+&option=com_content&Itemid=102

¹⁰⁶ ‘Unfair deportation’ *Star* Newspaper 21 September 2008, <http://www.stargazete.com/guncel/insafsiz-sinirdisi-129359.htm>

¹⁰⁷ Urgent Action, Index: UA 263/08 EUR 44/017/2008, 30 September 2008

¹⁰⁸ See Amnesty International *Turkey/Iran: Act now to protect refugees*, <http://www.amnesty.org/en/for-media/press-releases/turkeyiran-act-now-protect-refugees-20081014>

¹⁰⁹ *Uzbek Children may freeze to death in the Iranian Mountains* Association Droits de l'Homme en Asie Centrale <http://www.asiecentrale.info/en/?q=node/12>

¹¹⁰ *UNHCR Global Report, Turkey 2007*, available at <http://www.unhcr.org/home/PUBL/484921ee2.pdf>

¹¹¹ UNHCR partially suspended its operations in Erbil due to the deteriorating security situation. However the office in Erbil was reopened in 2006.

¹¹² Including the risk of attacks by Iranian agents alleged to be operating in Northern Iraq as well as the threat posed by the existence of Ansar al-Islam (Protectors of Islam), an Islamist group reportedly linked to al-Qa'ida, in the area near Halabja.

¹¹³ Letter from the Head of the Department of Foreigners and Asylum in the Police Headquarters to the Van Bar Association.

¹¹⁴ The People's Mojahedin Organization of Iran (PMOI) is a political organization that opposed and fought against governments appointed by Mohammad Reza Pahlavi, the last Shah, and took part in the fighting that became known as the Islamic Revolution in Iran, in 1979, which resulted in the creation of Iran's new government in the same year against which the PMOI subsequently fought. They were relocated to Iraq during the 1980-1988 Iran-Iraq war, where they were both protected by and supported the government of Saddam Hussein. In 1988, from their base at Camp Ashraf in Iraq, the PMOI undertook a failed attempt to invade Iran. In part as a reaction, the Iranian authorities executed hundreds, if not thousands, of PMOI detainees by way of summary executions in an event known in Iran as the "prison massacres". Following the US-led invasion of Iraq in 2003, the PMOI members were disarmed and accorded 'protected persons' status under Article 27 of the Fourth Geneva Convention which prevented extradition or forced repatriation to Iran as long as the US-led Multinational Force (MNF) was present in Iraq. The MNF also established a camp in Baghdad for all those who wished to leave the PMOI's facility of Camp Ashraf, and up to 300-500 are thought to have done so. The UNHCR was able to interview those former Camp Ashraf residents who had moved to another facility, referred to as Temporary International Presence Facility (TIPF), in Iraq while it was under US control. These TIPF residents were later moved to the Kurdistan Regional Government (KRG) region in northern Iraq. Amnesty International does not know why the UNHCR did not have access to residents at Camp Ashraf. From 2003-2008 the Iranian government is said to have offered an amnesty to all those wishing to return to Iran and many are reported to have taken up the offer, many working now with the Nejat Association. Following the US-led invasion of Iraq, the PMOI was disarmed and it subsequently announced that it had renounced violence. There is no evidence that it continues to engage in armed opposition to the Iranian government, though individuals associated with the PMOI continue to face human rights violations in Iran. In 2009 the 'protected persons' status lapsed as the government of Iraq once again became responsible for most internal affairs. The Iraqi government has repeatedly indicated that it wishes to close the facility and have the PMOI leave Iraqi territory.

¹¹⁵ Court documents seen by Amnesty International but identities of the applicants withheld.



WHETHER IN A HIGH-PROFILE
CONFLICT OR A FORGOTTEN
CORNER OF THE GLOBE,
AMNESTY INTERNATIONAL
CAMPAIGNS FOR JUSTICE AND
FREEDOM FOR ALL AND SEEKS TO
GALVANIZE PUBLIC SUPPORT
TO BUILD A BETTER WORLD

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STRANDED

REFUGEES IN TURKEY DENIED PROTECTION

Every year thousands of would-be asylum-seekers arrive in Turkey from countries such as Afghanistan, Iran, Iraq and Somalia. They travel by land, sea and air, some enduring long and hazardous journeys in the hope of protection.

Turkey does not recognize nationals of countries outside the Council of Europe as refugees. As a result, UNHCR, the UN refugee agency, assesses those asylum-seekers' claims for refugee status, allowing some to be resettled in third countries. However, serious barriers prevent people from applying for asylum in Turkey and result in Europeans and non-Europeans alike being denied international protection.

In this report, Amnesty International focuses on these barriers. In many cases people are denied an opportunity to apply for asylum after arriving at Turkey's borders or after being arbitrarily detained within the country. Asylum-seekers are denied access to legal assistance or interpreters.

Those who manage to apply for asylum do not have access to a fair national procedure to determine their refugee status and face severe restrictions in gaining access to health care, adequate housing and work.

The cases highlighted in this report also show how Turkey has violated international law by continuing to return asylum-seekers to countries where they are at risk of serious human rights violations.

Amnesty International is calling on the Turkish authorities to legislate for and implement a fair and satisfactory national asylum procedure, and to respect the rights of asylum-seekers, refugees and others in need of international protection.

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Index: EUR 44/001/2009
April 2009

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