

CHILDHOOD ON HOLD:

CONDITIONS AND TREATMENT OF SEPARATED MINOR REFUGEES IN TURKEY

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HELSINKI
YURTTAŞLAR
DERNEĞİ

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OF SEPARATED MINOR REFUGEES IN
TURKEY**

HELSINKI CITIZENS' ASSEMBLY – TURKEY

REFUGEE ADVOCACY AND SUPPORT PROGRAM

Helsinki Citizens' Assembly - Turkey

Refugee Advocacy and Support Program

Based in Istanbul, Turkey, Helsinki Citizens' Assembly - Turkey (hCa) is an independent, nonprofit, non-governmental organization working to advance fundamental rights and freedoms, democracy and pluralism in Turkey and the region. hCa's Refugee Advocacy and Support Program (RASP) was founded in 2004 to empower and support refugees in Turkey and ensure their rights are upheld under national and international law. RASP provides direct legal aid and psychosocial services to asylum seekers and refugees while simultaneously engaging in training and advocacy efforts aimed to improve their legal protection and build civil society capacity in the asylum field.

The overall goals of RASP are to: (1) provide legal and psychosocial services to refugees in ways that will empower them to advocate for their own rights; (2) raise public awareness and sensitivity about the conditions and rights of refugees in Turkey; (3) improve refugee protection by building the capacity of non-governmental organizations and professionals in Turkey; and (4) advocate for the development and implementation of laws, policies and practices that reflect the highest standards under international refugee and human rights law.

In pursuing these goals, hCa cooperates with a plethora of national and international partners. It is a founding member of the Coordination for Refugee Rights in Turkey, which brings together Turkey's leading human rights organizations to advocate domestically for refugee rights. It is also one of the founders of Southern Refugee Legal Aid Network (SRLAN), an initiative of legal assistance providers serving refugees in the global south. hCa was also the first NGO from Turkey to join the European Council on Refugees and Exiles (ECRE), an umbrella organization of over 60 refugee-assisting NGOs in Europe. More information about hCa is available at <http://www.hyd.org.tr/?sid=23>.

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1. EXECUTIVE SUMMARY

Over the last few years, as Europe has taken increasingly strong measures to stem the flow of irregular migrants to its borders, Turkey has experienced a significant increase in asylum applications. Separated minors¹ make up a growing proportion of Turkey's asylum seekers and refugees,² more than 16,000 of whom were registered with the UN High Commissioner for Refugees (UNHCR) in Turkey at the end of 2009. Primarily from Afghanistan, Sudan and Somalia, these children are survivors of significant trauma. Many have been separated from their parents during their flight from persecution or armed conflict, sometimes due to the death of adult family members. Others have fled their homes due to child-specific forms of persecution, including forced marriage or military recruitment.

Being identified as a separated child in need of international protection is the first, and perhaps most critical, hurdle facing the hundreds of separated minors arriving in Turkey each year. Countless children are detained and deported along with adult migrants before having the opportunity to claim asylum or articulate their other protection needs. Even those eventually identified as separated minor refugees (SMRs) spend lengthy periods in Removal Centers³ – detention centers for non-citizens – in substandard conditions, before being transferred to state accommodation facilities.

As a result of the “geographical limitation” Turkey applies to 1951 Refugee Convention, separated minors, like all other non-European asylum seekers, are ineligible for long-term refugee protection in Turkey. Instead, if they are granted “refugee status” by the UNHCR and allowed to stay in Turkey temporarily by its Ministry of Interior, efforts are made to resettle them in a third country, including Canada, the US or Australia. Not all minors, however, are granted refugee status or accepted by resettlement countries. Even those who are recognized generally wait months or years – at least until they reach 18 – to be resettled. In the interim, very few attend school and most face barriers to adequate healthcare and mental health support. None are assigned individual guardians, and only a handful have ever been issued residence permits, which severely curtails their ability to access state services. Those accepted for resettlement may face the added risks associated with paying prohibitively high exit fees, which other refugees have been required to pay before being granted permission by local authorities to leave the country.

While employees of some state agencies, notably Social Services and Child Protection, have taken very positive steps within their means to address the needs of SMRs, these measures have primarily been *ad hoc*. In order to address the serious protection gaps that continue to face SMRs – whether in terms of their legal status, their access to education, healthcare or other services – local authorities must develop sustainable, cross-agency solutions that take into account the best interests of every child assisted. Moreover, at a fundamental level, authorities must provide refugee children the same level of protection guaranteed to children who are citizens of Turkey.

¹ Throughout this report, the term “separated minor refugee” (SMR) has been used to refer to an asylum seeker or refugee under 18 who has been separated from his or her parents or previous legal or customary primary caregivers.

² By the end of 2009, 225 separated minor refugees had cases pending with UNHCR Turkey. Close to half are from Afghanistan, another 20% are Somali and the remainders originate from 15 other countries in Africa, Asia and the Middle East. See, Appendix, Table 2, “Separated Minors with Active Files at UNHCR, end of 2009.”

³ Until March 2010, these centers were referred to as “Foreigners’ Guesthouses.” The terminology was changed by an MOI circular issued on March 23, 2010 on Combating Illegal Migration. See, Ministry of Interior, “Yasadışı Göçle Mücadele ile İlgili Genelge No. 2010/22” (Circular on Combating Illegal Migration No. 2010/22), March 22, 2010, Part 2, Article b1.

Long-term Care

Once identified by state authorities as being under 18, SMRs are accommodated in facilities of SHÇEK, the Social Services and Child Protection Agency. Minors generally report positive treatment by SHÇEK staff and good living conditions. However, the lack of interpreters in SHÇEK facilities has a significantly detrimental impact on their ability to communicate with staff, particularly regarding their physical and mental health needs. Minors universally fear their eventual eviction at age 18. Very limited transitional counseling is provided by SHÇEK staff, the UNHCR and local NGOs when refugees “age out” of care. The ability of ex-minors to secure safe, affordable housing is almost impossible.

Education

Access by SMRs to education is extremely limited, despite their right under domestic law to attend public secondary school and informal educational and vocational programs. The state’s failure to issue them residence permits, a requirement for foreign nationals to attend secondary school, is a key obstacle to their ability to benefit from formal education. Only a handful attends high school on a regular basis, often as “guests,” meaning that they cannot receive diplomas. Others intermittently attend other training programs or classes. A number have been denied access to school because of their lack of proficiency in Turkish, others because state educational authorities stated that they could not test their educational level in the absence of documentation from their countries of origin. The lack of meaningful educational opportunities is perceived by minors as one of the most serious barriers they face in Turkey.

Healthcare

SMRs have great difficulty accessing state medical care. This flows in significant part from the fact that they are generally not issued residence permits because of prohibitively high fees and the failure by state authorities to exempt these fees, as permitted by law. Without residence permits, SMRs are not issued identification numbers compatible with the state healthcare system, a requirement for state services. Although SHÇEK staff has been able to secure state healthcare for minors on an *ad hoc* basis, these efforts are unsustainable. The little health and psychological care that minors accessed was provided by local NGOs, their limited resources permitting.

Refugee Status Determination and Resettlement Referral

Separated minors confront few difficulties registering with the police, but face long waits for the Ministry of Interior (MOI) to conduct “temporary asylum” status interviews and few reported being interviewed at all. This limits the state’s ability to promptly assess and respond to their protection needs. While minors are promptly registered by the UNHCR, many face excessive waiting times for UNHCR decisions without being provided information about when to expect a decision. Records indicate that Afghan minors tend to wait longer than others because of UNHCR’s overall Afghan case policy, which at the time of publication had been changed. UNHCR recognized separated minors are generally not referred for resettlement until they reach 18, a universal concern to the minors interviewed for this report. This delay appears to reflect concerns by resettlement countries and UNHCR that the resettlement of separated minors will encourage trafficking or forced migration. The effect is that SMRs in Turkey are kept in transit for years, deprived of adequate access to education and other social services.

Guardianship, Legal Representation and Residence Permits

Although civil courts in Turkey are authorized to appoint **guardians and trustees** to children under state care, SMRs are rarely appointed either. They face similar barriers accessing **legal**

representation. Most separated minors are unable to secure a notarized “power of attorney,” a prerequisite for legal representation, because they either do not have valid identity documents or have not been issued a residence permit. While minors subject to criminal proceedings are generally appointed lawyers, MOI has denied minors the right to legal representation during asylum status determination interviews. (UNHCR Turkey allows all asylum applicants legal representation during the refugee status determination process.) None of the minors interviewed for this report had been issued **residence permits**, severely curtailing their access to state services. The few whom police notified of their right to be issued residence permits were not exempted from associated fees and fines, which they were unable to pay.

1.2 Key Recommendations

To the Government of Turkey

- Treat separated minor refugees as children first, before considering their status as asylum seekers. Uphold their rights under international and domestic law. Provide them equal access to all rights granted to children who are citizens.
- Do not detain SMRs, except as a last resort, and never with adults. Amend the 2006 Implementation Directive to explicitly prohibit the detention of SMRs. Include a similar provision in any new asylum law.
- Refer identified SMRs to the Children’s Police, not the Foreigners’ Police. Train relevant staff to implement the Children’s Police Directive.
- Train security personnel and prosecutors on the identification of SMRs. Ensure police officers do not wear weapons that are visible to minors.
- Provide SMRs information on asylum procedures and their domestic legal rights in written and oral form, in an age-appropriate manner and in a language they understand.
- Provide SMRs the benefit of the doubt with regard to their age. Accept the age declared by an SMR, even if forged identity documents list an age over 18. Ensure age determination tests take into account physical, cognitive, behavioral and emotional indicators and apply a considerable margin of error. Allow SMRs to reside in child-friendly state facilities while waiting for age test results.
- Allow SMRs to apply for asylum. Process their asylum applications on a priority basis and issue decisions promptly. Conduct interviews in a child-friendly, culturally- appropriate manner, using trained interpreters as necessary. Issue positive decisions formally to protect SMRs from *refoulement*, and facilitate their access to healthcare and other services.
- Do not deport rejected minor asylum applicants.
- Train all state employees working with SMRs, including security, healthcare, child services staff and interpreters on asylum procedures, and child-friendly and culturally-appropriate interviewing techniques.
- Recruit and provide adequate training to qualified interpreters to be used in all agencies

working with SMRs.

- Provide SMRs the same access to education as children who are citizens and ensure they are enrolled in public school as soon as possible. Train educational authorities on laws relevant to SMRs to avoid discriminatory limitations on their access to education. Implement mechanisms to evaluate SMRs' level of education, in the absence of formal documentation.
- Provide SMRs the same access to healthcare as children who are citizens. Issue residence permits and state identification numbers to facilitate free care. Train care providers on age- and culturally-appropriate service provision. Conduct mental health assessments and treatment of SMRs as necessary.
- Conduct medical tests and screening with informed consent and ensure that SMRs are provided with test results.
- Consult SMRs regarding any significant decisions taken on their behalf.
- Provide SMRs guardians, consistent with domestic guardianship law.
- Provide SMRs legal representatives. Allow them unconditional access to SMRs. Allow them to represent SMRs during all legal proceedings, including during refugee status determination interviews. Train notaries to rely on alternatives to official identification documentation when issuing "power of attorney" authorizations for undocumented SMRs.
- Issue SMRs residence permits, exempting them from associated fees. Assign them state identification numbers compatible with the state service system to facilitate their access to healthcare and other services.
- Periodically re-assess SMRs' protection needs. Ensure evaluations are conducted by qualified child specialists with training on refugees issues.
- Trace SMRs' family members through the Red Crescent and by investigating leads provided by SMRs to state agencies.
- Provide sufficient transition assistance to refugees who "age out" of the state care system, in cooperation with UNHCR, charities and NGOs. Allow vulnerable ex-minors to reside in state facilities as long as necessary.
- Raise awareness regarding the rights of refugee children by collaborating with UNHCR, children's rights and refugee rights NGOs.

To the UN High Commissioner for Refugees

- Throughout the RSD process, ensure that SMRs' asylum claims are processed in an age-appropriate manner by specially trained staff.
- Carry out registration and status determination interviews and issue decisions without delay and on a priority basis. Inform SMRs of processing delays and provide a general timeframe for delayed decisions to be issued. If decisions cannot be issued for policy reasons, promptly explain this to minors in a child-appropriate manner.
- Continue to provide SMRs the benefit of the doubt with regard to their age, even if assessed

by local authorities to be 18 or over.

- Continue to pursue greater efforts to provide SMRs transition assistance when they “age out” of state care, in cooperation with state agencies, charities and NGOs.
- Continue to encourage the Government of Turkey to comply with its international and domestic legal obligations to SMRs.

To the Governments of Resettlement and Donor Countries

- Work with UNHCR, local children’s rights and refugee rights NGOs to lobby national authorities to ensure that SMRs’ basic protection and reception rights are upheld in Turkey.
- Consider resettling SMRs before they turn 18 in light of the significant protection gaps faced by SMRs in Turkey. In the alternative, work with UNHCR and national authorities to ensure that SMRs can be immediately resettled upon turning 18.
- Actively encourage MOI to exempt SMRs from residence permit fees and fines to facilitate their exit from Turkey.

1.3 Methodology

hCa has provided legal assistance to refugees in Turkey since 2004. During the course of this work, staff observed increasing numbers of separated minor refugees (SMRs) arriving in Turkey, most of whom faced significant protection gaps.⁴ As a result, hCa undertook an evaluation of the identification, reception, and care provided to SMRs in Turkey, the findings of which are reflected in this report. The aims of the report are to:

1. Help raise awareness regarding the vulnerable situation of SMRs in Turkey;
2. Identify local practices that uphold domestic and international standards of protection for SMRs, as well as those that fall short; and
3. Make practical recommendations for sustainable institutional solutions to protect SMRs and ensure their rights as children and refugees are upheld.

The findings of the report are based on interviews with minor refugees, civil servants, NGO employees and UNHCR staff and a review of hCa’s client files. Interviews, file review and legal research took place between July 2008 and December 2009.

In total, 92 files of hCa’s minor clients were reviewed, 85 of whom are boys and seven of whom are girls. In addition, 17 in-depth interviews were held with SMRs (16 boys, one girl). Twelve were resident in state accommodation facilities Istanbul. hCa was repeatedly denied permission to interview minors and staff in facilities outside Istanbul. All the minors interviewed understood the purpose of the report and provided their consent for the use of the information they provided. To protect their anonymity, any information that would render them individually identifiable has been omitted.

Interviews with representatives of international and domestic NGOs and state authorities primarily

⁴ Since 2006, hCa has assisted 91 SMRs, ranging from 12 to 17 years of age. Whereas only two cases were seen in 2006, this number increased dramatically to 37 in 2008 and 52 in 2009. Close to 80% were 16 or 17 years old when they first sought assistance from hCa. The majority are from Afghanistan and Sudan, with smaller numbers from Guinea, Somalia, Democratic Republic of Congo and other, mostly African, countries. Of the 91 assisted, 85 are boys and seven girls.

took place in Ankara, and included interviews with:

- **SHÇEK officials:** General Director of SHÇEK, Director of SHÇEK Provincial Directorate in Izmir, Head of SHÇEK's Press and Public Relations Department in Ankara, and Director of the SHÇEK *Dokuz Eylül* Boys' Home in the Buca district of Izmir. hCa's requests to meet with SHÇEK provincial administrators in Istanbul, Isparta and Gaziantep were denied.
- Five **UNHCR staff** in Ankara and one in Istanbul: Senior Protection Officer, Protection Assistant, Durable Solutions Assistant, Assistant Legal Officer, Senior Refugee Law Training Officer and Senior Field Assistant.
- Representatives of **Domestic NGOs:** The Children's Rights Platform of Ankara (*Ankara Çocuk Hakları Platformu*), the Refugee Psycho-Social Support Project of the Human Resources Development Foundation based in Istanbul (*İnsan Kaynağını Geliştirme Vakfı, Mülteci ve Sığınmacılara Psiko-sosyal Destek Projesi*), and the Association of Solidarity with Refugees (*Mültecilerle Dayanışma Derneği*), based in Izmir. Valuable informal telephone consultations were held with representatives of the Ankara-based Association for Solidarity with Asylum-seekers and Migrants (*Sığınmacı ve Göçmenlerle Dayanışma Derneği*).
- **Professionals:** Attorney-at-law Türkay Asma, head of the Children's Rights Commission of the Ankara Bar Association, and Nihat Tarimeri, social worker and author.

hCa was formally denied permission to interview representatives of the Foreigners, Borders and Asylum Division of the General Directorate of Security or of the Foreigners' and Children's branches of the Police.

1.4 Terminology

This report makes reference throughout to "separated minor refugees" (SMRs), which refers to refugees who are under 18 and who have been separated from their parents or previous legal or customary primary caregivers. The term "separated" is employed, as opposed to "unaccompanied," in recognition of the fact that some refugee children are accompanied by adults with no customary or legal responsibility for them. These children are often no less vulnerable and in the same legal position as those who are entirely unaccompanied.⁵

Consistent with international norms, the references herein to SMRs include all children who intend to apply, have applied for or have been granted refugee status⁶ by the UNHCR or "temporary asylum" status by Turkey's Ministry of Interior (MOI).⁷

⁵ The Separated Children in Europe Programme, "SCEP Statement of Good Practice," 2004, Part A, Article 2, http://www.savethechildren.net/separated_children/good_practice/SGP_3ed_print.pdf [accessed December 12, 2009].

⁶ As UNHCR notes, "a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition... Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee." See UN High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," January 1992, para. 28, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3314> [accessed December 15, 2009]. It follows that asylum seekers be provided the same basic protections as recognized refugees, until such time that they are not found to have international protection needs pursuant to a fair refugee status determination procedure.

⁷ Law in Turkey differentiates between European applicants for international protection, defined as "applicants for refugee status" (*iltica başvuru sahibi*) and non-European applicants, defined as "applicants for asylum seeker status" (*siğınma başvuru sahibi*). See, Implementation Directive, Circular No. 57, B.05.1.EGM.0.13.03.02/16147, 71810-12/Gnl.D.6-6, June 22, 2006. This is at odds with international usage, in which an "asylum seeker" is

“Refugees” are people who are outside their country of nationality due to a well-founded fear of persecution on the basis of their race, religion, nationality, membership of a particular social group or political opinion, who are unable or, owing to such fear, unwilling to avail themselves of the protection of their country of nationality.⁸

understood to be a person who has filed an application for refugee protection, while a “refugee” is understood to be a person whose application has been accepted.

⁸ This is the definition of “refugee” under the 1951 Refugee Convention and its 1967 Protocol and the definition used in this report. While many of the world’s refugees do not fit this definition, having escaped generalized violence, Turkey, despite the existence of relevant provisions in the domestic law, does not grant “subsidiary protection” or processes the asylum claims of individuals who fall outside the 1951 Convention criteria.

2. INTRODUCTION AND CONTEXT

Of the world's 16 million refugees, almost half are children.⁹ While many escape persecution together with family members, a significant number of children become separated during their flight. Some have watched as their close relatives have been killed, raped, arrested or 'disappeared'. Others have themselves been imprisoned, tortured,¹⁰ or subject to child-specific forms of persecution, including child-targeted kidnapping, forced marriage or military recruitment.¹¹ Many children have spent much of their lives in exile, sometimes fleeing persecution and conflict on multiple occasions.¹² Some find themselves in refugee camps, living in proximity to their home countries and communities. Others flee further afield and find themselves seeking asylum in countries far from their families, with no possibility of returning home.

The number of separated minors who have applied for refugee status in Turkey has more than doubled in the last five years.¹³ Although low in comparison with other Southern European states such as Greece and Spain,¹⁴ these numbers are consistent with the overall rise in asylum applications in Turkey in the same period.¹⁵ In 2009, UNHCR registered a total of 285 unaccompanied and separated minor refugees.¹⁶ Over the last five years, most have come from

⁹ UN High Commissioner for Refugees, "2008 Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons," June 16, 2009, p. 2 and 12, <http://www.unhcr.org/4a375c426.html> [accessed December 15, 2009].

¹⁰ See, e.g., Danish Refugee Council, "Unaccompanied Children in the Danish Asylum Process – Experiences from Legal Counselling of and Assistance to Children, 2000", http://www.drc.dk/fileadmin/uploads/pdf/English_site/Publications/Unac_ulflrapport.pdf [accessed December 14, 2009]. This study found that approximately one third of separated minors in Denmark had been imprisoned, one third were tortured and one third were involved in military activities.

¹¹ Liden Hilde and Rusten Hilde, "Asylum, Participation and the Best Interests of the Child: New Lessons from Norway," *Children and Society* 21 (2007): 273, 275. See also, Council of Europe Parliamentary Assembly, Committee on Migration, Refugees and Population, "Report on Protection and Assistance for Separated Children Seeking Asylum," Doc. 10477, March 22, 2005, para. 6.

¹² Steven Hick, "The Political Economy of War-Affected Children," *The Annals of the American Academy of Political and Social Science* 575, No.1 (2001): 106-112.

¹³ While only 116 had registered with the UNHCR in 2004, 285 did so in 2009. See, Appendix, Table 1, "Separated Minors Registered with UNHCR Turkey, 2004-2009."

¹⁴ Human Rights Watch estimated that in October 2008, 3,000 to 5,000 SMRs were in Spain. See, Human Rights Watch, "Returns at any Cost: Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards," 2008, p. 3, <http://www.hrw.org/en/reports/2008/10/17/returns-any-cost-0> [accessed December 11, 2009]. Human Rights Watch also estimated that 1,000 SMRs entered Greece in 2008. See, Human Rights Watch, "Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece," 2008, p. 2, <http://www.hrw.org/en/reports/2008/12/22/left-survive> [accessed December 13, 2009]. See also, Human Rights Watch, "In the Migration Trap: Unaccompanied Minor Children in Europe," 2010, <http://www.hrw.org/en/world-report-2010/migration-trap> [accessed January 21, 2010].

¹⁵ UNHCR had an average of approximately 3,900 new applications per year from 2003 through 2005. See, UN High Commissioner for Refugees, Turkey "1997-2007 Arası Avrupalı Olmayanların Sığınma Başvuruları" (Number of Asylum Applications from outside of Europe Between 1997-2007), <http://www.unhcr.org.tr/MEP/index.aspx?pagelid=158> [accessed December 13, 2009]. The number of applications rose to 4,550 in 2006, 7,640 in 2007, up to 12,980 in 2008 (almost 7,000 of whom were newly registered Iraqis whose cases had previously been "frozen"), and back to 7,834 in 2009. See, UN High Commissioner for Refugees, "Asylum Levels and Trends in Industrialized Countries, 2008," March 24, 2009, <http://www.unhcr.org/statistics/STATISTICS/49c796572.pdf> [accessed December 16, 2009].

¹⁶ See, Appendix, Table 1, "Separated Minors Registered with UNHCR Turkey, 2004-2009." UNHCR defines "unaccompanied children" as those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law and custom, is responsible for doing so, and "separated children" as those separated from both parents and from their previous legal or customary primary care-givers, but not necessarily from other relatives. See, UN High Commissioner for Refugees, "Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of

Somalia and Afghanistan, with smaller numbers from Iran, Iraq, Sudan and other Asian and African countries.¹⁷

Like adult refugees, SMRs reach Turkey in a variety of ways. Some hope to reach Greece or Italy but are deserted by traffickers *en route*. Others are smuggled overland through Afghanistan and Iran and eventually make their way to Istanbul. Yet others make their way to Greece only to be arrested and deported to Turkey. Many of the Sudanese minors interviewed, for example, made the treacherous journey to Turkey by boat from Libya. They paid smugglers to take them to Italy but instead were taken to Izmir. Some were brought to Istanbul by smugglers who left them at the Istanbul Bus Station. Others were left to fend for themselves: one boy reported being dropped on the coast and had to walk for a day to reach Istanbul.

Once they arrive, they not only face significant barriers to protective services, but to the asylum system itself. Untold numbers are deported before having the opportunity to apply for refugee status. The remainders are often held in detention facilities with adults for days or weeks before being determined to be minors. They are almost never appointed guardians or trustees. The few who undergo “temporary asylum” interviews with MOI are denied access to legal representation.

Although various measures have been taken by relevant state agencies to accommodate SMRs and to meet their social, medical and legal needs, these efforts often fall short of both domestic and international standards. Despite a functioning child protection system, SMRs are rarely afforded the same level of protection as children who are citizens of Turkey. For instance, only a few of those known to hCa attend school and most face significant barriers accessing effective medical care.

While many are ultimately granted refugee status by the UNHCR, most spend years in Turkey waiting to be resettled. Resettlement procedures are lengthy, and at least one resettlement country refuses the applications of separated minors altogether. Moreover, the SMRs who are ultimately approved for resettlement may face prohibitive fines before being granted permission to leave for safe third countries.

As set out in the report’s recommendations, Turkey must take a holistic, cross-agency approach to develop sustainable mechanisms to address these significant protection gaps.

Refugees,” December 2009, <http://www.unhcr.org/refworld/pdfid/4b2f4f6d2.pdf> [accessed December 15, 2009]. We include UNHCR Turkey numbers for both separated and unaccompanied minors herein, since both fall within the definition of separated minor refugee used in this report.

¹⁷ See, Appendix, Table 1, “Separated Minors Registered with UNHCR Turkey, 2004-2009.”

2.1 Asylum Procedures in Turkey

As European countries bordering the Mediterranean have introduced increasingly strong measures to stem the flow of irregular migration, Turkey has become one of the main channels for migration flows from Africa, Asia and the Middle East into Europe.

Each year, Turkey receives thousands of refugees from more than 40 countries worldwide. However, Turkey extends protection under the 1951 Refugee Convention and the 1967 Protocol only to persons originating in Europe.¹⁸ Since the vast majority of asylum seekers are not European, they are ineligible for domestic refugee status. Instead, their protection and prospects for a “durable solution” fall largely on the UNHCR, the UN agency charged with protecting and supporting refugees and assisting in their repatriation, local integration or resettlement.

Notwithstanding Turkey’s limited commitment under the 1951 Refugee Convention, the Government of Turkey does permit non-European asylum seekers to remain in the country temporarily while their refugee applications are evaluated by the UNHCR. Those whom the UNHCR recognizes as refugees become eligible for resettlement in third countries. The primary receiving countries are currently the US, Canada and Australia.¹⁹

Refugee status determination in Turkey is an arduous process, which usually lasts many months and often takes years. The domestic asylum system consists of two parallel tracks. The first involves applying to domestic authorities for asylum status in Turkey and is mandatory for all asylum seekers regardless of their country of origin. The second requires applying to the UNHCR for refugee status, and is applicable to non-Europeans who seek refugee status. Non-Europeans must pursue both tracks simultaneously.

To receive “temporary asylum status,” non-Europeans must apply to Turkey’s Ministry of Interior. This status allows asylum seekers to live legally in Turkey while the UNHCR evaluates their refugee claims. Turkey’s reception system for asylum seekers is characterized by a policy of dispersal. During their processing, asylum seekers are assigned to live in one of approximately 30 pre-designated “satellite cities,” located primarily in the country’s interior. Asylum seekers are required to live in their satellite cities until they depart Turkey, whether for resettlement or upon being deported. Police permission is required to leave one’s satellite city for any reason whatsoever.

Turkey currently hosts more than 16,000 asylum seekers and refugees, most of whom originate

¹⁸ Turkey adopted Article IB(1)(a) of the 1951 Convention relating to the Status of Refugees, extending protection only to persons who were rendered refugees as a “result of events occurring before 1 January 1951.” See, UN High Commissioner for Refugees, “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,” <http://www.unhcr.org/cgi-in/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b73b0d63> [accessed December 14, 2009]. Turkey’s later accession to the 1967 Protocol Relating to the Status of Refugees stipulated that the Government of Turkey maintained the limitation of Article I, Sec. B, according to which, Turkey applies the 1951 Convention only to persons who have become refugees as a result of events occurring in Europe. See, UN High Commissioner for Refugees, “Convention relating to the Status of Refugees,” July 28, 1951; UN High Commissioner for Refugees, “Protocol relating to the Status of Refugees,” January 31, 1967, Audiovisual Library of International Law, <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html> [accessed December 14, 2009]. To date, Turkey remains one of the few State Parties to the Refugee Convention to retain this “geographical limitation” and considers itself bound by its 1951 obligations only with respect to nationals of so-called “European countries of origin,” which it interprets by and large based on Council of Europe membership.

¹⁹ In 2009, UNHCR resettled 6,038 people, more than 80% of whom went to the US, with smaller numbers going to Canada and Australia and even fewer to Finland and Sweden. Seventy percent of those resettled were Iraqis, 26% were Iranians, 3% were Somali and the remainder originated from fourteen other African and Asian countries. Statistics provided by UNHCR Turkey.

from Iraq, Iran, Afghanistan and Somalia.²⁰ Many are survivors of torture. They usually arrive in Turkey after perilous journeys with few, if any, resources. After registering with the UNHCR and MOI, they are primarily left to survive on their own and are required to pay for all of their basic needs, including shelter and healthcare. All family members are required to hold a fee-based residence permit, which must be renewed every six months at additional cost. The associated costs are prohibitive for most.²¹ Both the UNHCR and the State provide very limited financial support, reserved only for the most vulnerable asylum seekers. With scant work opportunities and virtually no social support, most asylum seekers and refugees live in destitution. The majority wait many months and even years for a decision from the UNHCR. Those who are accepted for resettlement²² usually wait an additional year or more to leave Turkey. Many brave dangerous living situations and exploitative work settings in the interim, which pushes some to risk their lives in an effort to enter Europe illegally.

2.2 Turkey's Legal Obligations to Protect Separated Minor Refugees

For the duration of their stay in Turkey, SMRs are subject to domestic law. This gives rise to the state's legal obligation to provide SMRs at least the same level of care it provides children who are citizens.²³ These obligations are set out both in international law and standards and domestic law and regulations.

International Law and Standards

In addition to the 1951 UN Convention relating to the Status of Refugees (1951 Refugee Convention),²⁴ the key international convention protecting separated minor refugees in Turkey is the 1989 UN Convention on the Rights of the Child (CRC). The CRC, which was ratified by Turkey in April 1995, formalizes state responsibility for protecting all children.²⁵

Ratified by more than 190 states worldwide, it establishes the almost universal acceptance of the basic rights of children, irrespective of national and political boundaries.²⁶

²⁰ In 2009, UNHCR Turkey had an overall caseload of 16,337 people, 7,834 of whom applied for asylum during the year. Of the asylum applications received in 2009, 48% were from Iraq; 25% from Iran; 13% from Afghanistan; 4% from Somalia and the rest from close to 50 other countries. Statistics provided by UNHCR Turkey.

²¹ The cost of a residence permit is set by the Ministry of Finance each year and established in the Law on the Collection of Fees (No. 492). In 2009, a six-month residence permit cost 306.30 TL (288.15 TL for those 15 to 18) per person plus an additional 135 TL for the residence permit booklet, which only needs to be purchased once. Thus, the first year of fees, including two six-month permits and the booklet, is equivalent to 473USD or €390. Fees for 2010 have increased by about 8%.

²² In December 2009, UNHCR Turkey estimated that less than half of all recognized refugees are eventually resettled.

²³ See, UN General Assembly, "Convention on the Rights of the Child," 20 November 1989, Article 2, <http://www2.ohchr.org/english/law/crc.htm> [accessed December 14, 2009]. See also, "Çocuk Koruma Kanunu No. 5395" (Child Protection Law No. 5395), Article 4(c).

²⁴ See, 1951 Refugee Convention, *supra* note 18. Turkey acceded to the 1951 Refugee Convention in March 1962, and its 1967 Protocol in July 1968.

²⁵ Demonstrating its commitment to the protection of children's rights, Turkey also ratified the CRC's Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict in 2000. Turkey has also ratified and/or is signatory to a number of other conventions relating to the protection of children, including its 2002 ratification of the European Convention on the Exercise of Children's Rights. Turkey is also a signatory to a number of child protection conventions associated with the Hague Conference on Private International Law, including the 1956 Convention on the Law Applicable to Maintenance Obligations Towards Children, entered into force in Turkey in April 1972, and the 1980 Convention on the Civil Aspects of International Child Abduction, entered into force in Turkey in August 2000.

²⁶ Clotilde Giner, "The Politics of Childhood and Asylum in the UK," *Children and Society* 21 (2007): 249.

The CRC's provisions clearly establish Turkey's obligation to provide SMRs with appropriate protection and aid and take into account their best interests. In particular, the CRC requires Turkey to:

- provide every child within its jurisdiction his or her rights under the CRC, regardless of the child's status or nationality;²⁷
- take into account the "best interests of the child" when making decisions or taking actions on his or her behalf;²⁸ and
- take measures to ensure that children seeking refugee status, including those who are unaccompanied, receive appropriate protection and humanitarian assistance in the enjoyment of their rights.²⁹

The UN Committee on the Rights of the Child, which monitors compliance with the CRC and its optional protocols, has provided valuable observations and recommendations on states' treatment of separated minor refugees.³⁰ As part of this monitoring function, it has evaluated Turkey's compliance with the CRC in connection with SMRs. Significantly, in October 2009, the Committee held that Turkey had failed to establish mechanisms to identify refugee and asylum-seeking children who may have been recruited or used in hostilities, and that reintegration and recovery measures for these children were inadequate.³¹ It encouraged Turkey to strengthen these measures, support legal advice services, and immediately provide "culturally responsive, child sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration," appropriately train border staff, and uphold the principle of non-refoulement.³²

A founding member of the Council of Europe, Turkey is also encouraged to abide by that body's wide-ranging recommendations regarding the protection of SMRs.³³ These include, *inter alia*,

²⁷ UN Committee on the Rights of the Child (CRC), "CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin," September 1, 2005, CRC/GC/2005/6, [http://www.unhcr.ch/TBS/doc.nsf/7cec89369c43a6dfc1256a2a0027ba2a/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/TBS/doc.nsf/7cec89369c43a6dfc1256a2a0027ba2a/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf) [accessed December 14, 2009].

²⁸ Convention on the Rights of the Child, *supra* note 23, Article 3.1.

²⁹ *Id.*, Article 22. More specifically, Article 22 requires signatories to:

...take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

³⁰ See, e.g., UN Committee on the Rights of the Child, "CRC General Comment No. 6," *supra* note 27.

³¹ See, UN Committee on the Rights of the Child, "Consideration of Reports submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Concluding Observations: Turkey," October 29, 2009, CRC/C/OPAC/TUR/CO/1, para. 20, <http://www.unhcr.org/refworld/docid/4afa9afb2.html> [accessed December 13, 2009].

³² *Id.*, para. 21.

³³ See, e.g., Council of Europe, "Arrival of Asylum Seekers at European Airports," Recommendation 1475, 2000, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta00/EREC1475.htm> [accessed December 10, 2009]; Council of Europe, "Access to Assistance and Protection for Asylum-Seekers at European Seaports and Coastal Areas," Recommendation 1645, January 29, 2004, para. 10.ii.g., <http://assembly.coe.int/Documents/AdoptedText/ta04/EREC1645.htm> [accessed December 10, 2009]; Council of Europe, "Common Policy on Migration and Asylum," Recommendation 1624, September 30, 2003, para. 9.iv with regard to border control, <http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1624.htm> [accessed December 16, 2009].

minimum guarantees for the protection of SMRs;³⁴ the recognition that, due to their extreme vulnerability, SMRs should be provided special assistance, including guardians;³⁵ and that SMRs should only be detained in extraordinary circumstances and as a last resort.³⁶ A host of resolutions of the European Parliament,³⁷ the European Commission³⁸ and other European Union advisory bodies³⁹ are also persuasive in connection with the protection of SMRs in Turkey. Turkey is also bound by more general European human rights standards in this context, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force in Turkey in 1954) and the 1996 European Convention on the Exercise of Children's Rights (entered into force in Turkey in October 2002).

UNHCR, as part of its mandate, has for years provided wide-ranging interpretive guidance on the protection of SMRs.⁴⁰ UNHCR's December 2009 guidelines on child asylum seekers are particularly valuable in setting out the legal parameters for the evaluation of the refugee claims of SMRs.⁴¹

Publications of non-government organizations have similarly set out best practices for protecting SMRs.⁴² Widely relied on herein, the "Statement of Good Practice" published by the Separated Children in Europe Program (SCEP),⁴³ provides a comprehensive analysis of all relevant international conventions and related documents.

Turkey is not only bound to protect and assist separated minor refugees pursuant to the CRC and other relevant conventions, but strongly encouraged to comply with the recommendations of

³⁴ Council of Europe, "Council Resolution of 26 June 1997 on Unaccompanied Minors who are Nationals of Third Countries," 97/C 221/03, June 26, 1997, http://www.savethechildren.net/separated_children/other_resources/legal_policy/minors_unaccompanied_E_Uncouncil_resolution.pdf [accessed December 13, 2009].

³⁵ Council of Europe, "Migration of Unaccompanied Children: Acting in the Best Interests of the Child," Final Communiqué of Regional Conference, MG-RCOCONF, Malaga, Spain, October 27-28, 2005, p. 14, http://www.coe.int/T/DG3/Migration/Source/Draft_Programme_en.pdf [accessed December 10, 2009].

³⁶ Council of Europe Parliamentary Assembly, Committee on Migration, Refugees and Population, "Protection and Assistance for Separated Children Seeking Asylum," Doc. 10477, March 22, 2005, <http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10477.htm> [accessed December 10, 2009].

³⁷ See, e.g., European Parliament, "Resolution on the Harmonization of Forms of Protection Complementing Refugee Status in the European Union," Official Journal C 150, May 28, 1999, Article 17; European Parliament, "Resolution on Measures to Protect Minors in the European Union," Official Journal C 020, January 20, 1997, Article 38

³⁸ See, e.g., European Commission, "Communication From the Commission to the European Parliament and the Council: Action Plan On Unaccompanied Minors (2010 – 2014)," May 6, 2010, COM(2010)213 final, SEC(2010)534, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>.

³⁹ See, e.g., European Union: European Agency for Fundamental Rights, "Separated, asylum-seeking children in European Union Member States: Summary Report," April 30, 2010, 978-92-9192-591-9, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_sep_asylum_en.htm [accessed 12 May 2010].

⁴⁰ See, e.g., UN High Commissioner for Refugees, "Thematic Compilation of Executive Committee Conclusions," August 2009, <http://www.unhcr.org/refworld/docid/4a7c4b882.html> [accessed December 14, 2009]; UN High Commissioner for Refugees, "UNHCR Guidelines on Determining the Best Interests of the Child," May 2008, <http://www.unhcr.org/refworld/docid/48480c342.html> [accessed December 10, 2009]; UN High Commissioner for Refugees, "Assistance to Unaccompanied Refugee Minors: Report of the Secretary-General," A/60/300, August 24, 2005, <http://www.unhcr.org/refworld/docid/43bce4782.html> [accessed December 13, 2009]; UN High Commissioner for Refugees, "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum," February 1997, <http://www.unhcr.org/refworld/docid/3ae6b3360.html> [accessed December 13, 2009]; UN High Commissioner for Refugees, "Refugee Children: Guidelines on Protection and Care," 1994, <http://www.unhcr.org/refworld/docid/3ae6b3470.html> [accessed December 11, 2009].

⁴¹ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16.

⁴² See, e.g., Inter-Agency, "Inter-Agency Guiding Principles on Unaccompanied and Separated Children," January 2004, <http://www.unhcr.org/refworld/docid/4113abc14.html> [accessed December 11, 2009]; Save the Children, "Working with Separated Children: Field Guide and Training Manual," 2000, http://www.savethechildren.org.uk/en/54_2376.htm [accessed December 11, 2009].

⁴³ The Separated Children in Europe Programme, *supra* note 5.

the Council of Europe, the European Parliament, international agencies and NGOs. Based on these obligations, Turkey is required to uphold the following principles:

- the best interests of the child shall be the primary consideration in all actions concerning SMRs;
- the views of SMRs should be taken into account whenever decisions affecting them are made;
- SMRs are entitled to the same treatment and rights as other children;
- SMRs should not be detained for reasons related to their status, whether at the border, in Removal Centers, police cells or other places of detention;
- upon identification, SMRs should be referred directly to child welfare authorities;
- as soon as an SMR is identified, a guardian should be appointed;
- age assessments, if necessary, should be carried out by professionals with appropriate expertise; and
- separated children should never be denied access to asylum procedures and should be assisted through the entire process by a legal representative.

Domestic Law and Regulations

The Constitution of Turkey provides that international agreements to which Turkey is a party and have been duly put into effect, carry the force of law in Turkey.⁴⁴ Moreover, where international and national laws contradict each other in matters related to basic rights and freedoms, international law takes priority.⁴⁵

As noted above, Turkey ratified the CRC in April 1995. It has since enacted a series of laws to bring children's rights in Turkey in line with the CRC, including the Child Protection Law, which includes special protections for vulnerable children that are applicable to SMRs.⁴⁶

The Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu*) or SHÇEK, has been designated to implement Turkey's obligations under the CRC and coordinates those efforts at the state institutional level. That agency is responsible for the accommodation of SMRs in Turkey. Most of the minors interviewed for this report were living in SHÇEK facilities at the time of their interviews. Moreover, many of the state employees identified herein as taking positive steps to meet the protection needs of SMRs are employed by SHÇEK.

Other key national laws, regulations and directives setting out standards for the protection of children in Turkey and applicable to SMRs include:

- Directive on the Procedural and Substantive Issues Regarding the Implementation of the Child Protection Law (*Çocuk Koruma Kanunu'nun Uygulanmasına İlişkin Usul ve Esaslar Hakkında Yönetmelik*), No. 26386, December 2006;
- Directive on the Establishment and Duties of the General Security Directorate, Children's Branch (*Emniyet Genel Müdürlüğü Çocuk Şube Müdürlüğü/Büro Amirliği Kuruluş Görev ve Çalışma Yönetmeliği*), No. 24372, April 2001, which sets out the key functions of the Children's Police, including its responsibilities with respect to SMRs;
- Law of SHÇEK, the Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu Kanunu*), No. 2828, May 1983;

⁴⁴ The Constitution of the Republic of Turkey, November 7, 1982, Article 90.

⁴⁵ Id.

⁴⁶ Child Protection Law, *supra* note 23.

- Laws on education, including the Principle National Education Law (*Milli Eğitim Temel Kanunu*), No. 1739, June 1973; the Primary and Other Education Law (*İlköğretim ve Eğitim Kanunu*), No. 222, January 1961; the Law on Foreign Students Studying in Turkey (*Türkiye'de Öğrenim Gören Yabancı Uyraklı Öğrencilere İlişkin Kanun*), No. 2922, October 1983; the Directive on Informal Education Institutions (*Yaygın Eğitim Kurumları Yönetmeliği*), No. 26080, February 2006; the Directive on Open Education at the Secondary Level (*Milli Eğitim Bakanlığı Açık Öğretim Lisesi Yönetmeliği*), No. 26023, December 2005; the Directive on Open Occupational Education at the Secondary Level (*Milli Eğitim Bakanlığı Mesleki Açık Öğretim Lisesi Yönetmeliği*), No. 26033, December 2005; the Education Related Problems of Refugees and Asylum Applicants in Turkey (*Mülteci ve Sığınma Başvuru Sahiplerinin Eğitim Sorunları*), No. 24126/158423, September 2006; the Directive on Secondary Education Institutions (*Milli Eğitim Bakanlığı Ortaöğretim Kurumları Yönetmeliği*), No. 27305, July 2009; and
- The Turkish Civil Code (*Türk Medeni Kanunu*), No. 4721, December 2001, in connection with guardianship issues.

These regulations, in addition to Turkey's asylum laws and relevant international law and guidance, are referenced throughout this report as the basis for the protection of SMRs in Turkey. The report's recommendations reflect the gaps between Turkey's obligations under domestic and international law and guidelines and its practices regarding the protection of SMRs.

3. FINDINGS

3.1 Identification and Interim Care

*I came from Libya with three other Sudanese, who are now in Greece. The rest were Ethiopian and Nigerian. The smuggler said we were going to Italy but when we got here, I learned that I was in Turkey. When we arrived in Izmir, I was caught by the police. I told them I was 17. They kept me in detention for 17 days.*⁴⁷

International Standards

Separated minor refugees enter Turkey in numerous ways, ranging from arriving at Atatürk International Airport in Istanbul with valid passports and visas to being smuggled over the Syrian or Iranian borders, or dropped on the coast by boats arriving from Libya. As a result, there is no single means of identifying SMRs or ensuring that they enter the asylum and child protection systems in Turkey. There are, however, a number of basic principles that should be followed in all cases.

The 2004 SCEP Statement of Good Practice (“SGP”) advises governments to establish procedures for identifying separated minors at points of entry, including by determining whether minors accompanied by adults are actually separated children.⁴⁸ Once they are identified:

Separated children seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subjected to detailed interviews by immigration authorities at the point of entry⁴⁹.

This prohibition includes detention at borders, in detention centers, police cells or special detention facilities for young people.⁵⁰ As noted in the CRC, children should only be detained as a measure of last resort and separated from adults.⁵¹

As an alternative to detention, the SGP advises that separated minors be provided interim accommodation leading to longer-term care:

Separated children should be found suitable care placements as soon as possible after arrival or identification. Care authorities should conduct a careful assessment of their needs and changes in care arrangements should be kept to a minimum... Siblings should be kept together if it is in the best interest of the child... Whether they are placed in foster care or in residential settings, separated children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect separated asylum seeking and migrant children.⁵²

Since many SMRs arrive in countries of asylum without identification documents, state authorities often conduct age determination tests to confirm their status as minors. International standards provide that such tests should only be conducted “if necessary,”⁵³ and that they take

⁴⁷ A Sudanese minor.

⁴⁸ The Separated Children in Europe Programme, *supra* note 5, para. C.4. See also, Council of Europe, “Resolution on Unaccompanied Minors,” *supra* note 34, Article 3(1); UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, paras. 5.1-5.3.

⁴⁹ The Separated Children in Europe Programme, *supra* note 5, para. C.1.

⁵⁰ *Id.*, para. C.9.

⁵¹ Convention on the Rights of the Child, *supra* note 23, Articles 37(b) and 37(c).

⁵² The Separated Children in Europe Programme, *supra* note 5, para. C.11.1.

⁵³ UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, para. 5.11.

into account a range of physical, developmental, cognitive and psychological factors.⁵⁴ Experienced, independent professionals should carry out age tests in a gender- and culturally-sensitive manner.⁵⁵ When technology is used, it must be safe and respect the human dignity of the child being tested.⁵⁶ Age tests should always be carried out with the consent of the minor and a specially appointed guardian.⁵⁷ It is widely agreed that age assessment is not “an exact science” and that considerable margins of error should be applied.⁵⁸ It is also well established that when a child’s age is uncertain, he or she should be given the benefit of the doubt, and someone claiming to be under 18 should be treated as such.⁵⁹

Age tests that rely exclusively on so-called “scientific procedures,” such as the bone tests and x-rays used in Turkey, are recognized as unreliable. In the UK, for example, bone tests are widely criticized as inaccurate, since they rely on age reference standards developed in the 1950s based on Caucasian subjects.⁶⁰ Bone tests are considered particularly inaccurate for the 15 to 18 age group, exactly the age at which they are most commonly used in the asylum context.⁶¹ Moreover, clinical and ethical issues arise in connection with the use of x-rays (which involve exposure to ionizing radiation) for non-therapeutic purposes, particularly in the absence of informed consent from the child being tested or a legally responsible guardian.⁶²

Law and Practice in Turkey

Under state law, the Children’s Police are responsible for providing care to “unaccompanied minors.”⁶³ Among other things, the Children’s Police are obligated to meet the child’s essential needs, including medical care, until returned to his or her family or transferred to a SHÇEK facility.⁶⁴

⁵⁴ UNHCR, “Guidelines on Child Asylum Claims,” *supra* note 16, para. 75; The Separated Children in Europe Programme, *supra* note 5, para. C.8; Royal College of Paediatrics and Child Health, “Policy Statement,” 2006, http://www.rcpch.ac.uk/doc.aspx?id_Resource=1581 [accessed December 12, 2009]; Convention on the Rights of the Child, *supra* note 23, para. 31(i).

⁵⁵ The Separated Children in Europe Programme, *supra* note 5, para. C.8.

⁵⁶ UNHCR, “Guidelines on Child Asylum Claims,” *supra* note 16, para. 75; UNHCR, “Refugee Children,” *supra* note 40, p. 104.

⁵⁷ UNHCR, “Guidelines on Child Asylum Claims,” *supra* note 16, para. 75; Council of Europe, “Resolution on Unaccompanied Minors,” *supra* note 34, Article 4(3).

⁵⁸ *Id.*; See also, UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, para. 5.11; UNHCR, “Refugee Children,” *supra* note 40, p. 104.

⁵⁹ The Separated Children in Europe Programme, *supra* note 5, para. C.8.; UNHCR, “Refugee Children,” *supra* note 40, p. 104; UN High Commissioner for Refugees, “Unaccompanied Minors Seeking Asylum in Greece,” April 2008, <http://www.unhcr.org/refworld/docid/48abd557d.html> [accessed December 15, 2009]; Council of Europe Parliamentary Assembly, Committee on Migration, Refugees and Population, *supra* note 36, para. 32; UN High Commissioner for Refugees, “Procedural Standards for Refugee Status Determination under UNHCR’s Mandate,” September 1, 2005, Section 3.4.5, pp.3-26, <http://www.unhcr.org/publ/PUBL/4316f0c02.html> [accessed December 10, 2009].

⁶⁰ Critics note that due to changes in nutrition and environmental factors, individuals may reach “bone maturity” considerably sooner than when they did at the time these bone maturity indicators were developed. Moreover, UK’s bone tests are inappropriate for children from ethnic and racial backgrounds different from those relied upon for creating the reference standards. Royal College of Paediatrics and Child Health, “The Health of Refugee Children – Guidelines for Paediatricians,” para. 5.6, <http://www.library.nhs.uk/guidelinesfinder/ViewResource.aspx?resID=29920> [accessed December 11, 2009]. See also, Council of Europe Parliamentary Assembly, Committee on Migration, Refugees and Population, *supra* note 36, para. 31.

⁶¹ Heaven Crawley, “When is a Child Not a Child? Asylum, Age Disputes and the Process of Age Assessment,” Immigration Law Practitioners’ Association, 2007, p. 3, <http://www.ilpa.org.uk/publications/Executive%20Summary%20Age%20Dispute.pdf> [accessed December 11, 2009].

⁶² Royal College of Paediatrics and Child Health, “Policy Statement,” *supra* note 54.

⁶³ Emniyet Genel Müdürlüğü, “Çocuk Şube Müdürlüğü Büro Amirliği Kuruluş Görev ve Çalışma Yönetmeliği No.24372” (Directive on the Establishment and Duties of the General Security Directorate Children’s Branch No.24372), April 13, 2001.

⁶⁴ *Id.*, Article 7.

The Children's Police Directive, which contains definitions of both a "child refugee" and "unaccompanied child refugee" consistent with international law and standards⁶⁵, also calls for the establishment of "Child Care Units" as places of temporary accommodation during this waiting period.⁶⁶ Significantly, the Directive states that no other division of the security forces may take any action with regard to a child until he or she is transferred to the Children's Police, which should be done "within the shortest possible span of time."⁶⁷

The scheme described in the Children's Police Directive, however, only becomes relevant after the state positively identifies a child as a separated minor. That identification process is sometimes carried out by means of an age determination test. Turkey's asylum directive requires an age assessment to be conducted where a person claims to be under 18 but appears older.⁶⁸

Age tests are to be carried out at state hospitals or at the Institute of Forensic Medicine.⁶⁹ Until the completion of an age test, a separated minor refugee is to be accommodated, "within the confines of available capacities," which not only includes Children's Police facilities, but Removal Centers.⁷⁰ Removal Centers, previously called "Foreigners' Guesthouses", are places of detention, where conditions fall far short of international standards, and where children are held alongside adults.⁷¹

After their identification, but prior to their placement in long-term care, SMRs are subject to medical screening. Blood tests are a required component of the general health assessment process and for admission to SHÇEK facilities.⁷²

A circular issued by SHÇEK General Directorate in March 2010 reiterates that SMRs who do not have documents to prove their age and who appear older than 18 can only be referred to SHÇEK after the Provincial Security Directorate acquires an age determination report.⁷³

The circular, however, fails to address the interim accommodation and support needs of SMRs prior to their admission to SHÇEK facilities during age determination procedures and medical testing.

⁶⁵ Id., Article 4. That article defines "refugee" as: "A person who is outside his/her country of nationality and is unable to benefit from the protection of that country or is unwilling to because he/she fears of being in that country, or who is outside his/her previous country of residence where he/she was not a citizen, and has not returned there or is unwilling to return there due to fear." An "unaccompanied minor" is defined as "a child who is in a refugee situation and whose family unity has been dissolved due to such causes as death, disappearance or detention, and is therefore alone and has no adult to accompany him/her."

⁶⁶ Id., Section 4, Article 20.

⁶⁷ Id., Article 19.

⁶⁸ Implementation Directive, *supra* note 7, Section 6.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ See, Council of Europe: Commissioner for Human Rights, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his Visit to Turkey on 28 June - 3 July 2009. Issue Reviewed: Human Rights of Asylum Seekers and Refugees," CommDH(2009)31, October 1, 2009, para. 60, https://wcd.coe.int/ViewDoc.jsp?id=1511237&Site=CommDH#P262_54256 [accessed December 12, 2009]; Human Rights Watch, "Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union," November 26, 2008, http://www.hrw.org/sites/default/files/reports/greeceturkey_1108web_0.pdf [accessed December 13, 2009]; Helsinki Citizens' Assembly, "Unwelcome Guests: the Detention of Refugees in Turkey's Foreigners' Guesthouses," April 2008, http://www.hyd.org.tr/staticfiles/files/rasp_detention_report.pdf [accessed December 12, 2009].

⁷² "Çocuk Koruma Kanunu'nun Uygulanmasına İlişkin Usul ve Esaslar Hakkında Yönetmelik No. 26386" (Directive on the Implementation of Protective and Supportive Measures Granted According to the Child Protection Law No. 26386), December 2006, Article 14(4).

⁷³ General Directorate for Social Services and Child Protection, "Sığınmacı / Mültecilere ait işlemler, No. B.02.1.SÇE.0.09.01.00" (Circular on Procedures Concerning Asylum-seekers / Refugees, No. B.02.1.SÇE.0.09.01.00), 24 March, 2010, Part B, Paragraph 3.

Barriers to the Identification of Separated Minors

Most of the minors represented by hCa or interviewed for this report entered Turkey without valid travel documents, primarily across Turkey's borders with Syria and Iran, and usually by smugglers. As one Afghan minor typically reported, "I traveled to Istanbul through Iran. I was smuggled into the country. I came with a large group of people, though none were relatives." A Sudanese minor described his experience as follows:

I came into Turkey through Syria, arriving in Antakya. There were a total of 31 of us being smuggled, divided into three groups. There were two Somalis, a Palestinian, an Ethiopian and another African in our group. The other two groups got caught. We were sent to Istanbul by bus.

Others arrived by boat from Libya on Turkey's Aegean coast, often believing that they had landed in Italy or Greece. Some described arriving in Greece only to be deported to Turkey. As a Sudanese minor described:

I arrived in Izmir, by ship. I came with my cousin, who had been taking care of me since we left Sudan. We went to Greece, but got caught. I was deported but my cousin wasn't and I don't know where he is now. They sent me back to Izmir. I went straight to Istanbul with four guys I met during the deportation.

Many described spending their first days or weeks in Turkey sleeping on beaches, in public parks or on the streets. Some described eventually arriving in the Kumkapi neighborhood of Istanbul, where other refugees or migrants referred them to UNHCR or other refugee- assisting NGOs. As one minor described:

At the Istanbul bus station, I met a Turkish man who had lived in Riyadh and spoke Arabic. He told me to go to Kumkapi. I stayed in Kumkapi for about three months. I lived with Somalis in two different places, but each time was kicked out because I couldn't pay the rent. Then I met Faisal who told me about hCa and Mona, a Somali woman, took me there.

The majority of interviewees, however, reported being apprehended with adult migrants by the *gendarmerie*, coast guard or police before being able to apply for asylum.

The lack of an effective state system for identifying separated minors in Turkey is widely acknowledged. The UN Committee on the Rights of the Child observed in an October 2009 report that Turkey had failed to establish effective mechanisms to identify refugee and asylum-seeking children. It recommended that Turkey "ensure the availability of specially trained staff within the border authorities... and that the best interests of the child and the principle of non-refoulement are primary considerations taken into account in the decision- making process regarding repatriation of such children."⁷⁴

This perception is confirmed by NGOs working in the field. As noted by UNHCR Turkey representatives, when authorities apprehend a group of migrants in border areas "generally no differentiation is made between adults and minors." Similarly, a representative of the Izmir-based NGO Mülteci-Der observed that:

Migrants are mostly caught near small towns. In those areas, there are no interpreters or psychologists, and hardly anyone who can provide them asylum information. Neither is there any mechanism in place to identify whether a minor is unaccompanied or not. In fact, if the minor is traveling in a larger group with adults from the same nationality, the authorities simply assume that there is a family link or the minor is grouped together with one of the adults in the same group to create a fictive family link.

⁷⁴ UN Committee on the Rights of the Child, "Turkey Observations," *supra* note 31.

The result is that untold numbers of separated minors, like others intercepted for irregular presence in Turkey, are denied access to the country's asylum procedure and subject to *refoulement*.⁷⁵

During the last two months of 2009 alone, hCa prevented the deportation of ten SMRs intercepted by the authorities before submitting an asylum claim by obtaining interim measures from the European Court of Human Rights.⁷⁶ Local authorities processed all these SMRs as so-called "illegal migrants" despite their explicit requests to seek asylum in Turkey. From the onset of their arrest and detention, these SMRs were not provided any explanation regarding the basis or length of their detention, the procedures to which they would be subjected to, or their rights under the national law.⁷⁷

Detention of Separated Minors

Those minors who are not deported are routinely detained with adults, in violation of international law. All the minor interviewees described being detained for at least one day, and many reported being held for weeks alongside adults. A minor caught in Izmir, for example, reported being detained for almost three weeks and held with adult migrants, even though he informed the police he was under 18 as soon as he was apprehended.

Not a single interviewee described being told the purpose or length of the detention. In some cases they were held for long periods before being identified as minors. In others, they were detained while they waited for the results of age determination tests. They were detained by the Foreigners' Police and by the Children's Police or temporarily by both. In some cases, the minors interviewed were unclear where they had been detained, since authorities had not informed them where they were.

Their experiences in detention ranged widely. A few, like this Sudanese minor, described being treated very well during stay in detention:

At first I was scared. But then I found out that they [police officers] were very nice. Everything was good and I had no problems. I slept well. There was also a separate bathroom. I got proper meals. I had three meals a day. I was not allowed to leave, but I was allowed to make phone calls. A police officer even gave me his mobile phone to make a call because he liked me.

Most, however, had more negative experiences. One, who was severely traumatized by the recent death of family members, described being pushed and harassed by police during his one-week detention. Many described overcrowded rooms, insufficient bedding and meals, and limited access to the bathroom. One reported that he was held with 16 other minors in a room with four beds. Another reported that during his week-long detention, he was only given bread and cheese and not every day. Another reported being upset to see police officers carry guns, a clear violation of Article 22 of the Children's Police Directive. A Somali minor provided a typical description of his detention experience:

⁷⁵ Starting in 2008, hCa has brought numerous successful applications to the European Court of Human Rights (ECtHR) to prevent instances of *refoulement* by national authorities in Turkey (under Rule 39 of the Rules of Court). For a summary of the problems refugees encounter accessing asylum procedures in Turkey, see, among others, Amnesty International, "Stranded: Refugees in Turkey denied protection," April 22, 2009, <http://www.amnesty.org/en/library/info/EUR44/001/2009/en> [accessed December 13, 2009]; Human Rights Watch, "Stuck in a Revolving Door," *supra* note 71.

⁷⁶ As the European Court of Human Rights has held, domestic remedies in Turkey in deportation cases are ineffective (see *Abdolkhani and Karimnia v. Turkey* [Appl. No. 30471/08]). As a result, the only remedy available to individuals at risk of imminent deportation is to request an interim measure to prevent the deportation from the European Court of Human Rights.

⁷⁷ hCa file notes.

We stayed there for four days. They kept us in a small room with one bed. We slept either on the bed or the bench or the floor. It was very dirty. Many people kept coming in and out. I don't know how old they were, but they looked older than us. There was no one who spoke our language. Only one of the police officers was friendly to us. We only got food when the nice police officer was on duty. We had to ask for permission to use the toilets. It was the first time that my brother and I were ever in jail.

Lack of Protection by Children's Police

Security forces are required by law to immediately transfer separated minors to Children's Police departments, where they are to be housed in child-friendly facilities until transferred to SHÇEK facilities for long-term care. However, in most cases, separated minors are held by the Foreigners' Police or must find their own accommodation until being processed as minors and moved into SHÇEK housing. Interviews suggest that this is at least in part due to the reluctance of the Children's Police to take responsibility for SMRs. As UNHCR Ankara's former Senior Protection Officer described:

When the numbers of unaccompanied minors started increasing, the Children's Police refused to assist. We approached family court judges to inquire about what to do, as we had been keeping the children in a hotel. It took us a while to convince the judges that the Children's Police should take charge of these children.

The former Director of the Refugee Psycho-Social Support Program of the Human Resource Development Foundation (HRDF), a local NGO and UNHCR implementing partner, similarly noted, that "the Children's Police don't have a separate budget for SMRs, so they are reluctant to admit them." She also pointed to the compounding problem of a lack of appropriate accommodation for separated minors in Children's Police facilities, stating that "the conditions in the Children's Police facilities are obviously not suitable. After all, it is detention."

It is often the Foreigners' Police branch, which is not bound by the Children's Police Directive, that oversees most of the processing of separated minor refugees. In Istanbul, minors who have not already been detained by the Foreigners' Police are referred to that agency, registered, and in some cases, sent for an age test. Only when the Foreigners' Police confirm a minor's age, do they refer the minor to the Children's Police, which facilitates the move to a SHÇEK facility.

This process is both lengthy and bureaucratic. Those who are not detained in Removal Centers must arrange their own accommodation before being transferred to SHÇEK facilities. While local NGOs and UNHCR regularly attempt to identify temporary housing, these efforts are *ad hoc*. A group of 11 minors, for example, described waiting more than ten days for their registration appointment at the Foreigners' Police, during which time some slept in an Istanbul park. A number of requests by local NGOs and UNHCR to the Children's Police to house the minors until they could be referred to SHÇEK were turned down on the basis that their age tests were not complete and no official referral had been made by the Foreigners' Police.

As noted by the former Director of the Refugee Psycho-Social Support Program of HRDF:

The failure by the Children's Police to take charge of a child and come up with an appropriate interim arrangement is a violation of the law. They shouldn't leave a child out on the streets on his own to take care of himself, but they do. Remember, this is a child identified as a "child in need of protection."

Age Assessment

Police generally process SMRs as minors if they present identity documents indicating that they are under 18, or if they are undocumented but appear under 18. However, those who declare themselves to be minors, but have forged identity documents listing their age as over 18, are either

processed as adults or sent for age assessment tests. A 15-year-old Congolese boy, for example, with a forged passport listing his age as 25, was sent by police for an age test and held in detention for a week awaiting the results. When the test results indicated that he was 18, the police refused to process him as a minor. Only after hCa provided police with a more comprehensive age assessment test indicating that he was a minor was he processed as such and referred to SHÇEK care. Undocumented minors who appear over 18 are also sent for age determination tests.⁷⁸

The minor interviewees who experienced age tests generally reported that they were not told the reason for or provided the results of the tests. As one Afghan minor described:

They didn't ask any questions, and I didn't either because I was afraid. There was an interpreter. No one explained the purpose of the test or gave me the results. They also didn't say what would happen after the test results came out. I felt really scared.

In contravention of international law, some minors were held in detention until the results of their age tests were known. As a Sudanese minor reported:

I was taken for tests by the police to a hospital. They took blood from both arms, and took X-rays of both my arms and legs. No one asked me any questions. There was no psychological test. After the test they took me back to cell at the police station. I did not get the results of the test.

A review of files and interviews with SMRs indicate that age assessment tests are generally carried out in a state hospital on the basis of bone X-rays of the wrist or leg. Most of the interviewees subsequently assessed as under 18 were accommodated in SHÇEK facilities within a few days or a week after the results of the test were finalized. Those found to be 18 or over are processed as adult asylum seekers.

None of the minors interviewed described being interviewed by a juvenile psychologist as part of the age assessment process. The practice of basing age assessment on bone tests without relying on other indicators of age or maturity has been criticized in Turkey.⁷⁹ As a social worker noted:

A bone test determines physiological maturity and is generally used to diagnose if there is an abnormality with a child's growth... The application of this method is acceptable when trying to determine if there are disruptions in the physical development of a child. However it is unacceptable for a child to be deprived of certain rights based on this test. The CRC states that a child is a person under the age of 18; however, this age limit is not determined solely by physical maturity. It also depends on mental, social and other developmental factors.⁸⁰

⁷⁸ Implementation Directive, *supra* note 7, Section 6, which requires an age assessment test to be conducted when a person claims to be under 18 but appears older. Also see, Circular on Procedures Concerning Asylum-seekers / Refugees, *supra* note 73, which requires an age assessment report for those who appear older than 18 for admission to a SHÇEK facility.

⁷⁹ Büken Bora, Safak Alp Alper, Yazici Burhan, Büken Erhan and Mayda Atilla Senih, "Is the assessment of bone age by the Greulich-Pyle method reliable at forensic age estimation for Turkish children?" *Forensic Science International* 173, No. 2 (2007): 146-153, http://www.biomedexperts.com/Abstract.bme/17391883/Is_the_assessment_of_bone_age_by_the_Greulich-Pyle_method_reliable_at_forensic_age_estimation_for_Turkish_children [accessed December 10, 2009].

⁸⁰ Senar Ataman, "Kemiğin kaç yaşında?" (How old is your bone?), January 5, 2008, <http://www.multeci.net/modules.php?name=News&file=print&sid=117> [accessed December 10, 2009].

Medical Screening

All the minors interviewed reported undergoing blood tests before being admitted into long-term care in SHÇEK facilities.⁸¹ Many described being held in detention during the process. Few were informed why they were undergoing tests, either before or during the tests. A Sudanese minor described his experience as follows:

After two days in detention, they took us to the hospital to get some tests. Two policemen took us. They took some blood. There were no interpreters. The nurse spoke to us in Turkish but we did not understand. After the test, no one told us the results. Then we were taken back to the detention place.

A number of minors reported being handcuffed during the medical screening process. An Afghan minor described being taken for blood tests with a large group of children, all handcuffed:

We were about 20-25 kids going to the hospital. They took us in handcuffs. We were like a convoy. There were about ten police with us. They took us for a blood test. A Farsi interpreter told us we were there for our health.

While the practice of handcuffing minors for medical tests had tapered off by early 2009, periodically since then, minors reported similar experiences. This practice clearly violates Turkey's Child Protection Law, which states that children cannot be held in chains, handcuffs or other restraints.⁸²

3.2 Long-term Care

*Initially we also looked at unaccompanied minors as asylum seekers first, and not as children. But children are children. First their needs for primary care must be taken care of and then the asylum issue will be dealt with.*⁸³

International Standards

International standards establish states' obligation to provide SMRs with long-term care.⁸⁴ This includes accommodation, recreational activities, clothing, financial assistance, and transition out of the protection system for minors who turn 18. The provision of care should be based on a careful assessment of a child's needs, taking into account his or her age, sex, emotional state, family background, continuity of care, possibilities of family reunion, reasons for flight and educational background.⁸⁵ All care decisions should be made in consultation with the child.⁸⁶

In terms of accommodation, community-based care is considered ideal, since it keeps a minor "within his or her community and provides continuity in socialization and development."⁸⁷ This care preferably involves placement with a foster family from the minor's

⁸¹ This is consistent with the health assessment process prior to admittance to SHÇEK facilities set forth in the directive on the implementation of the Child Protection Law, *supra* note 72, as well as the Circular on Procedures Concerning Asylum-seekers / Refugees, *supra* note 73, para. 4.

⁸² Child Protection Law, *supra* note 23, Article 18.

⁸³ Senior Protection Officer, UNHCR Ankara.

⁸⁴ The Separated Children in Europe Programme, *supra* note 5, paras. C.11, C.13.

⁸⁵ UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 10.4; UN High Commissioner for Refugees, "Working with Unaccompanied Children: A Community-Based Approach," May 1996, http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3763 [accessed 20 December 2009]. See also, UNHCR, "BID Guidelines," *supra* note 40.

⁸⁶ The Separated Children in Europe Programme, *supra* note 5, para. C.13.3.

⁸⁷ Inter-Agency, "Guiding Principles on Unaccompanied and Separated Children," *supra* note 42, para. 4(b).

cultural community, but may require placement in a small group home with appropriately trained staff.⁸⁸ It is well established that separated minors should only be placed in institutional care if necessary.⁸⁹ All forms of care require adequate monitoring to ensure minors' effective protection.⁹⁰

Once separated minors turn 18, and "age out" of the state care system, they should be provided transitional care and counseling to assist them adjust to living independently.⁹¹

Law and Practice in Turkey

Turkey's child services agency similarly appears to prioritize foster care over institutionalized care for separated minors. As noted by the Deputy Director of SHÇEK:

*Considering the well-being of children, the most important thing is to have caring parents. If this isn't possible, children should be adopted or placed in the care of foster parents. They should only be institutionalized as a last resort.*⁹²

However, of the approximately 20,000 children in SHÇEK care at the end of 2009, only 1,155, or 5%, were living with foster families.⁹³ Without exception, SMRs are accommodated in SHÇEK facilities, rather than in foster care or with families from their countries of origin.⁹⁴

At the end of 2009, there were 118 SMRs living in SHÇEK facilities across Turkey.⁹⁵ In Istanbul, where most minors interviewed for this report reside, about 60 live in the Kadıköy Yeldeğirmeni Center for Children and Youth (*Kadıköy Yeldeğirmeni Çocuk ve Gençlik Merkezi*), which only accommodates minor refugees.⁹⁶ Smaller numbers live in facilities in the Kartal, Küçükbakkalköy and Bahçelievler neighborhoods, where separated minor refugees and citizen minors live together.⁹⁷ Girls are usually accommodated in the Bahçelievler facility. When they turn 18, all minors are required to leave the care of SHÇEK facilities.

While the state may by law continue to protect vulnerable ex-minors until the age of 20, this

⁸⁸ The Separated Children in Europe Programme, *supra* note 5, para. C.13.3; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 10.2.

⁸⁹ Convention on the Rights of the Child, *supra* note 23, Article 20(3). That provision further notes that care outside a child's usual family environment may include "foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children."

⁹⁰ UNHCR, "Assistance to Unaccompanied Refugee Minors," *supra* note 40, para. 44.

⁹¹ The Separated Children in Europe Programme, *supra* note 5, para. C.13.3; See also, UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 10.9.

⁹² Nurdan Tornacı, Deputy Director of the Social Services and Child Protection Agency, as quoted in UNICEF's quarterly newsletter. UNICEF, "Autumn 2007: Minimum Standards," Children First No. 05/07 (2007), <http://www.unicef.org/turkey/oc5/cp73.html> [accessed December 13, 2009]. For related legislation, see, Law of SHÇEK, "Sosyal Hizmetler ve Çocuk Esirgeme Kurumu Kanunu No. 2828" (The Social Services and Child Protection Agency Act No. 2828), May 1983, Article 22. See also, "Koruyucu Aile Yönetmeliği No. 21728" (Directive on Guardian Families No. 21728), October 1993.

⁹³ Information provided by Erdem Baylan of SHÇEK's Office of General Management in Ankara.

⁹⁴ See, Table 4, "Separated Minors According to Institutional Care Status 2004-2009."

⁹⁵ Id. At the end of 2009, 167 separated minor refugees were not in institutional care. Despite being identified as minors, these children were not referred to SHÇEK facilities by the national authorities as the Ministry of Interior has determined them to be over 18 based on the results of bone tests or ages listed on forged travel documents.

⁹⁶ This shelter has been hosting only refugee minors since November 2008, when citizen minor residents were transferred to other facilities. Among other reasons, transfer of citizen children was done in response to a series of altercations between some of the refugee and citizen children at the facility. Despite recommendations by staff to the SHÇEK Directorate in Istanbul that the citizen children gradually be transferred to other facilities during the summer holidays, the transfer was implemented abruptly in November 2008, without consultation with any of the children, causing significant stress to the citizen children and the SMRs alike.

⁹⁷ These include the Yeldeğirmeni Kartal Home for the Observation of Children (Yeldeğirmeni Kartal Gözlemevi), the Küçükbakkalköy Home for the Observation of Children (Küçükbakkalköy Gözlemevi), and the Bahçelievler Atatürk Home for Girls (Bahçelievler Atatürk Kız Yetiştirme Yurdu).

extended protection is not generally provided to refugees.⁹⁸ According to relevant domestic asylum regulations, once they turn 18, they are asked to leave SHÇEK facilities, and referred to a “satellite city” where they are expected to survive on their own, like other adult asylum applicants.⁹⁹

Most minors interviewed were satisfied with conditions in SHÇEK facilities. A Sudanese minor provided a typical description:

There are about 18 kids in my room. I like the food. They give us clothes. In terms of activities, there is boxing, there is a coach for sports, there is a TV. It is easy to get permission to leave the center. I began to attend a Turkish language course, which takes place at the center.

Many were specifically positive about their **relationships with facility staff**, noting that they were helpful and supportive. NGO representatives providing social and legal assistance to the minors in Istanbul provided similarly positive feedback about working with SHÇEK staff.¹⁰⁰ While some African minors reported racist treatment by a healthcare worker and food server at their facility, these complaints were resolved after they complained directly to facility staff.¹⁰¹

The small number of interviewees who lived in facilities with citizen minors reported that staff treated all children equally. As one Sudanese minor described, “the treatment between Turkish and non-Turkish kids is the same. We eat the same food, sleep in the same place, wake up at the same time.” However, they did note that knowledge of Turkish brought certain benefits. As a Somali minor reported:

There is no difference between how they treat the refugee and Turkish kids. But the Turkish kids, because they can speak the language, can bargain with the staff, so they can get their way.

SHÇEK staff were also generally positive regarding their **interaction with other minor residents**. While some reported tensions between language and cultural groups, these did not often escalate to the point of serious conflict. A number of children at the Kadıköy Yeldeğirmeni facility, who were disciplined for fighting, reported being sent to another SHÇEK facility in Küçükbakkalköy for a few days. While the move may have been initiated to ease tensions, the minors viewed it as punishment. Moreover, their transfer to another facility may arguably exacerbate their underlying feelings of displacement, isolation and trauma.

With regard to **recreational activities**, minors residing in the Kadıköy Yeldeğirmeni facility reported that they were able to play football most days, albeit on a small concrete tennis court, and allowed to leave the facility on a regular basis for brief visits to the seaside. Some described being taken to football matches by their SHÇEK caretakers at the nearby Fenerbahçe Stadium. They also reported an annual week-long trip to Antalya. Other positive experiences included periodic trips around Istanbul, and the possibility of receiving guests, such as friends from other facilities.

⁹⁸ The Social Services and Child Protection Agency Act, *supra* note 92, Article 24. See sub-section of this report “3.2. Long-term Care” with regards to ‘aging out’ of SHÇEK care, below, which indicates that SMRs who turn 18 are often permitted to stay in SHÇEK facilities for a few weeks or months at most, in order to find accommodation outside the facility.

⁹⁹ See section 2.1 Asylum Procedures in Turkey, above.

¹⁰⁰ As noted by the former Director of the Refugee Psycho-Social Support Program of the Human Resources Development Foundation: “SHÇEK personnel are very cooperative. For example when we tell them that a minor needs to come to our office for psychological counseling, they do arrange the travel and send him.”

¹⁰¹ They complained that a staff healthcare worker refused to touch them because they are black. The minors raised this complaint with the facility staff, who spoke to him. After this, the minors no longer complained of mistreatment. Other African-origin minors complained to the facility staff that a contracted food server in the cafeteria regularly told them to “go back to Africa.” Hearing these complaints, the facility staff successfully had him removed from his position at the facility.

The minors also reported receiving 17 TL (\$11 USD or €9) per month in **financial assistance** from SHÇEK administrators. Those living in Istanbul facilities received an additional 20-45 TL (\$13-28 USD or €10-23) per month from an anonymous donor, depending on the number of minors accommodated at one time.¹⁰² The minors reported that the majority of the financial support they received was spent on phone calls, demonstrating their need to establish and maintain contact with family members, friends or community members.

The SMRs' feedback on **clothing** was mixed: some reported that the allocation was adequate, while others said that they were not provided enough clothes or clothes that fit. The staff of the Kadıköy Yeldeğirmeni facility complained about the lack of clothing for children, particularly items appropriate for winter weather.

The lack of **interpreters** in SHÇEK facilities was one of the most significant problems identified by the minors and SHÇEK staff interviewed. The majority of staff working in SHÇEK facilities only speak Turkish, while the minors mostly speak Arabic, Farsi, French, Pashto and Somali. SHÇEK staff interviewed for the report pointed out that those communication problems severely impaired their ability to understand the children's psychological and medical needs and to provide information regarding the asylum process. NGO service providers observed that the lack of interpreters led to confusion and anxiety on the part of minors, who often did not understand the psychological and medical services they were being provided.

"Aging out" of SHÇEK care was universally an issue of serious concern to the minor interviewees. Most knew that they would have to leave their facility when they turned 18, but had no idea what would happen to them or how they would survive when they left. Often, staff permitted minors to stay on in SHÇEK centers after turning 18 for a few weeks, in order to secure housing outside the facility. In rare circumstances, they were permitted to stay longer. One case involved a young man who was serving as an interpreter; another involved a young woman who was going to be resettled to a third country in a short period of time.

While SHÇEK staff reported that they provide limited counseling to residents before they leave SHÇEK care, no other service provider provided any **comprehensive transitional counseling**. A young Sudanese refugee recently evicted from a SHÇEK facility described his transition:

The center was good. They gave us three meals a day, clothes, sometimes also money. I went to a Turkish course for some time. It was very good and now I miss it. The director told me that they received an order that I had to leave. I told her I had no place to stay, and I asked them to give me one more week so I could try to find a place. They let me stay. I felt really bad. I am now staying in a very small room with six other people. I don't know how we will pay the rent. I feel I have lost everything...

Housing and other social support for former minors is extremely limited. UNHCR provides ongoing financial assistance recognized refugees leaving SHÇEK accommodation and provides former minor asylum seekers "one-time-special" financial assistance. In late 2009, UNHCR conducted an assessment of the protection gaps faced by former minors residing outside of state care. In conjunction with this survey, UNHCR was able to secure limited food and clothing support for ex-minors from a number of local NGOs.¹⁰³ Finding housing for these young people, however, has been more challenging and many of these young people wind up living in crowded, dangerous conditions with even more limited access to healthcare and education. While UNHCR and various local NGOs continue their efforts to find ex-minors safe housing, no long-term solution had been identified at the time of this report's publication.

¹⁰² In 2010, financial assistance provided by SHÇEK increased and it differed from one child to another depending on age and schooling. The private donation was initiated in September 2008 and is facilitated by the UNHCR.

¹⁰³ These include the Human Resource Development Foundation, a UNHCR implementing partner, and Caritas.

3.3 Education

*Now we are at the education age, we have to learn to get a proper future...*¹⁰⁴

*A teacher came to our center to teach us Turkish for four or five months. But these classes finished a month or two ago. There are no courses for now... We told the staff that we want to go to school and they told us, "We'll look into it." Usually once a month they take us to places, but otherwise we're always sitting around, watching TV.*¹⁰⁵

International Standards

The international benchmark for the education of children is set by the CRC. State parties to the CRC recognize the fundamental right of all children to education¹⁰⁶. The CRC and other instruments call for free, universal and compulsory primary education, and generally available and accessible secondary education, including vocational training.¹⁰⁷ These forms of education must be available to all without discrimination.¹⁰⁸

International standards also clearly state that SMRs should have the same access to education as nationals.¹⁰⁹ In general, they should be allowed to enroll in any vocational training or education that might improve their prospects.¹¹⁰ Further, educational institutions should take a "flexible, welcoming approach" to separated minors.¹¹¹

Law and Practice in Turkey

The lack of education for SMRs in Turkey is one of the largest protection gaps facing this vulnerable population. Despite Turkey's obligations under international law, and a domestic legal framework and school system that supports the provision of education to all children, minor refugees often go for years without access to public schools or basic education.

Article 42 of the Constitution of Turkey provides that "no one can be denied their right to education." This right is implemented through a variety of laws, directives and circulars regarding compulsory primary education, secondary and vocational education, and opportunities for informal education for people who have not completed their compulsory education.¹¹²

¹⁰⁴ Somali minor.

¹⁰⁵ Afghan minor

¹⁰⁶ Convention on the Rights of the Child, *supra* note 23, Article 28(1).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, Article 2; UN General Assembly, "International Covenant on Economic, Social and Cultural Rights (ICESCR)," United Nations Treaty Collection, Article 13.2, <http://www2.ohchr.org/english/law/cescr.htm> [accessed December 12, 2009]. Turkey ratified the ICESCR in 2003. See, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en [accessed December 12, 2009].

¹⁰⁹ The Separated Children in Europe Programme, *supra* note 5, para. C.11.3; See also, Council of Europe, "Resolution on Unaccompanied Minors," *supra* note 34, Article 3(6); UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 7.12; UN General Assembly, Convention on the Rights of the Child, *supra* note 23, Article 28(1) generally, and specifically, Article 28(1) (b), which requires access to all children to secondary education.

¹¹⁰ UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 7.14.

¹¹¹ The Separated Children in Europe Programme, *supra* note 5, para. C.11.3.

¹¹² See, laws on education, "Milli Eğitim Temel Kanunu No. 1739" (Principal National Education Law No. 1739), June 1973; "İlköğretim ve Eğitim Kanunu No. 222" (Primary and Other Education Law No. 222), January 1961; "Türkiye'de Öğrenim Gören Yabancı Uyruklu Öğrencilere İlişkin Kanun No. 2922" (Law on Foreign Students Studying in Turkey No. 2922), October 1983; "Yaygın Eğitim Kurumları Yönetmeliği No. 26080" (Directive on Informal Education Institutions No. 26080), February 2006; "Mesleki ve Teknik Eğitim Yönetmeliği No. 24804" (Directive on Occupational and Technical Education No. 24804), July 2002; "Milli Eğitim Bakanlığı Açık Öğretim Lisesi Yönetmeliği No. 26023," (Directive on Open Secondary Education at Secondary Level No.26023), December 2005; Ministry of National Education, "Milli Eğitim Bakanlığı Mesleki Açık Öğretim Lisesi Yönetmeliği No. 26033" (Directive on Open Occupational Education at Secondary Level No. 26033), December 2005

School is compulsory for all children under 14.¹¹³ Children unable to finish primary school by this age may continue their primary education for another two years.¹¹⁴ Those who have not attended primary school or whose education has been interrupted may attend primary school equivalency programs.¹¹⁵ The Education and Interior Ministries have also issued several circulars in a coordinated effort to promote the school enrolment of refugee children 14 and under.¹¹⁶

Children over 14 are not required to attend school, but are entitled to attend secondary school if they attended primary school, and may otherwise attend informal education courses.¹¹⁷ Refugee minors over 14 are entitled to the same educational opportunities. Domestic law specifically permits “stateless people, asylum seekers and refugees” to attend secondary school without first obtaining a student visa, provided they have been issued a residence permit that is valid for at least six months.¹¹⁸ This requirement clearly poses problems for SMRs, since residence permits, if issued to minors at all, are only issued for a maximum of six months.¹¹⁹ They also are required to provide proof of previous education to enroll in secondary school,¹²⁰ which is rarely possible in light of the circumstances surrounding their departure from their countries of origin.

Refugee minors over 14 are also entitled to attend informal education classes, including distance learning programs,¹²¹ public education,¹²² and vocational training programs.¹²³ To enroll in distance learning programs, students must have a valid residence permit and provide proof of previous education,¹²⁴ which are all but impossible for most SMRs. Public education courses also require enrolling students to have a valid residence permit.¹²⁵

However, state authorities have the discretion to allow any student to enroll,¹²⁶ which in theory, ensures access by SMRs to these courses. Moreover, no minimum number of students is necessary for a class to be held at a Public Education Center if it is meant for “children under state protection.”¹²⁷ Significantly, domestic legislation specifically holds that lack of Turkish language proficiency cannot be used to limit refugees’ access to education.¹²⁸

Despite the educational opportunities available to minor refugees, only a small minority of those interviewed or known to hCa attend school on a regular basis. At the time of publication,

¹¹³ Primary and Other Education Law, *supra* note 112, Article 3; Principal National Education Law, *supra* note 112, Article 22.

¹¹⁴ Primary and Other Education Law, *supra* note 112, Article 46.

¹¹⁵ *Id.*, Article 11.

¹¹⁶ See, e.g., Ministry of Interior, “Mülteci ve Sığınma Başvuru Sahiplerinin Eğitim Sorunları” (Education Related Problems of Refugees and Asylum Applicants in Turkey), No. 24126/158423, September 22, 2006. This circular stipulates that refugee and asylum seeking children are to be accepted in primary schools and be exempt from residence fees while in attendance.

¹¹⁷ Directive on Open Secondary Education at Secondary Level, *supra* note 112; Directive on Open Occupational Education at Secondary Level, *supra* note 112.

¹¹⁸ Ministry of National Education, “Milli Eğitim Bakanlığı Ortaöğretim Kurumları Yönetmeliği No. 27305” (Directive on Secondary Education Institutions No. 27305), July 31, 2009, Article 25(1)(b).

¹¹⁹ See sections 2.1 Asylum Procedures in Turkey, above, and 3.6 Guardianship, Legal Representation and Residence Permits, below.

¹²⁰ Ministry of National Education, “Milli Eğitim Bakanlığı Denklik Yönetmeliği No. 25393” (Directive on Educational Equivalency No. 25393), March 5, 2004.

¹²¹ Directive on Open Secondary Education at Secondary Level, *supra* note 112; Directive on Open Occupational Education at Secondary Level, *supra* note 112.

¹²² Ministry of National Education, “Yaygın Eğitim Enstitüsü Yönetmeliği No. 26080” (Directive on Informal Education Institutions No. 26080), February 14, 2006, Article 54.

¹²³ *Id.*; Directive on Occupational and Technical Education, *supra* note 112.

¹²⁴ Directive on Open Secondary Education at Secondary Level, *supra* note 112, Article 14-15; Directive on Open Occupational Education at Secondary Level, *supra* note 112, Articles 14-15.

¹²⁵ Directive on Occupational and Technical Education, *supra* note 112, Article 45.

¹²⁶ Directive on Informal Education Institutions, *supra* note 122.

¹²⁷ *Id.*, Article 55.

¹²⁸ Principal National Education Law, *supra* note 112, Article 4.

three French-speaking minors were attending a private French academy, but only after significant advocacy by SHÇEK and hCa staff,¹²⁹ and only in a “guest” status, meaning they cannot receive a diploma. Seven Turkish-speaking Afghan minors under the age of 14 were attending a primary school equivalency program (*Yetiştirici Sınıf Öğretim Programı*), which will lead to their ability to attend public school. Only three minors, two Afghan and one Somali, all fluent in Turkish, were attending public high school.

The other minors interviewed were universally frustrated that they did not attend school, and most did not understand why. As one¹³⁰ reported: “I don’t know why I am not going to school... All the other Turkish kids at the center go to school”. These minors, like most SMRs arriving in Turkey, have experienced gaps in their education, either due to conflict or because of time spent in exile. Their interrupted education, as well as their lack of Turkish fluency, is often cited by state authorities to explain why they are not enrolled in school. Turkish fluency, they argue, is necessary to test the education levels of SMRs with no proof of their previous education.¹³¹ This justification clearly has no basis in law.¹³²

Most separated minors did report intermittently attending computer, crafts or Turkish classes at Public Education Centers. In at least one case, however, a Turkish language course at an Education Center was cancelled due to lack of students, in violation of domestic provisions.¹³³ Some minors also attended classes offered at their SHÇEK facilities, but those were irregular and depended on the interest of volunteer teachers and requirements of the facility. When discussing their hopes for the future, minor interviewees frequently raised their desire to get an education. “My hope is to finish my education and live in a secure place,” said a Sudanese minor. “I want a bright and light future.” Another said, “The important thing is to... finish my education and to live in a good environment and to feel that I’m free for the rest of my life.”¹³⁴ “I would like to continue my education,” said another, “because education is the most important thing in life.”¹³⁵ “I would consider staying in Turkey if I could go to school,” said an Afghan minor.

Turkey has a clear obligation to make education available to all SMRs, regardless of their language abilities or past schooling.¹³⁶ In light of the fact that almost no SMRs are resettled until after they turn 18,¹³⁷ it is particularly critical that they are able to access formal education in Turkey, which will ultimately assist in their integration in resettlement countries or, barring resettlement, integration in Turkey.

The SHÇEK circular issued in March 2010 reiterates the requirement that SMRs between 6 and 14 attend school and the right of older SMRs to access educational opportunities to the extent that law and resources permit.¹³⁸

¹²⁹ The principal initially was reluctant to enroll a Congolese minor on the basis that “it would take time for the other students to get used to him.”

¹³⁰ Afghan minor.

¹³¹ SHÇEK staff cited this as the rationale provided by school principals who were unwilling to enroll SMRs in their schools.

¹³² Principal National Education Law, *supra* note 112, Article 4; Primary and Other Education Law, *supra* note 112, Article 11. See also, Ministry of National Education, “222 Sayılı İlköğretim ve Eğitim Kanununa Göre Açılacak Yetiştirici ve Tamamlayıcı Sınıflar ve Kurslar Yönetmeliği No. 12757” (Directive on the Instructive and Complementary Classes and Courses to be opened according to the 222 Primary Education and Education Law No. 12757), October 22, 1967, Article 1.

¹³³ Directive on Informal Education Institutions, *supra* note 122, Article 55.

¹³⁴ Sudanese minor.

¹³⁵ Sudanese minor.

¹³⁶ Convention on the Rights of the Child, *supra* note 23.

¹³⁷ See section on “Refugee Status Determination,” below.

¹³⁸ SHÇEK Circular, *supra* note 73, Part C, Article 1.

3.4 Healthcare

International Standards

International human rights instruments provide that everyone, including children,¹³⁹ have the right to enjoy “the highest attainable standard of physical and mental health.”¹⁴⁰

Children under state care must be provided “protection or treatment of [their] physical or mental health” as well as a “periodic review of the treatment provided.”¹⁴¹ These rights are to be enjoyed by all, without discrimination, including on the basis of nationality and ethnicity.¹⁴² SMRs, for instance, should have “access to healthcare on an equal basis with national children.”¹⁴³

It is well established that SMRs, who have experienced varying degrees of loss, trauma, disruption and violence, have special physical and mental health needs.¹⁴⁴ International instruments and guidelines require that measures be taken to promote the physical and psychological recovery of child victims of torture and armed conflict in an environment fostering health, self-respect and dignity.¹⁴⁵ Careful attention must be paid to their health needs, whether arising from physical deprivation, psychological trauma or the effect of racism in countries of asylum.¹⁴⁶ The provision of culturally-appropriate mental health counseling is often vital to their recovery.¹⁴⁷

Law and Practice in Turkey

Turkey’s child protection law clearly obligates the state to provide appropriate healthcare to SMRs. “Temporary or permanent medical care and rehabilitation” is to be provided to any child “whose physical and mental health requires protection and care.”¹⁴⁸ Children in SHÇEK care are to be provided free treatment and medication at state hospitals¹⁴⁹ and all SHÇEK facilities must have healthcare providers on site.¹⁵⁰ Before being accommodated in SHÇEK facilities, minors must undergo a health screening for contagious diseases and must be immediately provided with any necessary treatment.¹⁵¹

Despite the generous provisions in domestic law, SMRs face significant barriers to free healthcare and medication. Failure by the Foreigners’ Police to issue them residence permits is a key obstacle to accessing medical treatment. Without residence permits, SMRs cannot receive identification numbers compatible with the state service system, a prerequisite to being processed in a state

¹³⁹ Convention on the Rights of the Child, *supra* note 23, Preamble.

¹⁴⁰ ICESCR, *supra* note 108, Article 12(1).

¹⁴¹ Convention on the Rights of the Child, *supra* note 23, Article 25.

¹⁴² *Id.*, Article 2(1); ICESCR, *supra* note 108, Article 2(2).

¹⁴³ The Separated Children in Europe Programme, *supra* note 5, para. C.11.2. See also, UN Committee on the Rights of the Child, “CRC General Comment No. 6,” *supra* note 27, para. 46; UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, Article 7.9.

¹⁴⁴ UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, Article 7.10.

¹⁴⁵ Council of Europe, “Resolution on Unaccompanied Minors,” *supra* note 34, Articles 3(7), 39. See also, UN Committee on the Rights of the Child, “CRC General Comment No. 6,” *supra* note 27, para. 60.

¹⁴⁶ The Separated Children in Europe Programme, *supra* note 5, para. C.11.2.

¹⁴⁷ *Id.*; UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, paras. 7.10, 7.11.

¹⁴⁸ Child Protection Law, *supra* note 23, Articles 5(d), 45.

¹⁴⁹ Yetiştirme Yurtlarının Kuruluş ve İşleyişine İlişkin Yönetmelik No. 22462” (Directive on Youth Homes No. 22462), November 13, 1995, Article 51; “Çocuk ve Gençlik Merkezleri Yönetmeliği No. 24539” (Directive on Child and Youth Centers No. 24539), September 30, 2001, Article 16.

¹⁵⁰ Directive on Youth Homes, *supra* note 149, Article 12 (psychologists), Article 14 (healthcare providers), Article 15 (nutritionists), Article 16 (nurses), Article 33 (infirmary and quarantine room).

¹⁵¹ Directive on the Implementation of the Child Protection Law, *supra* note 72.

hospital.¹⁵² SHÇEK staff interviewed for this report described a range of *ad hoc* measures undertaken to help refugee minors access hospital treatment and medication. These included showing hospitals the ID cards of citizen children living in the same facility, or using discretionary agency funds or personal money to cover the cost of treatment. Domestic NGOs and charities also provided significant funds to cover the cost of SMRs' healthcare.

Another serious barrier they faced accessing effective medical care was the lack of interpreters in SHÇEK facilities and state hospitals. Many SMRs reported having difficulties explaining their medical problems to health professionals or not understanding the treatment they had or would be receiving. The lack of qualified interpreters was also a critical obstacle to the provision of mental health services to SMRs.

A related problem reported was the lack of qualified psychologists with experience working with refugees, especially in "satellite" cities. While local NGOs, implementing partners of UNHCR and a few private mental health providers do provide refugee minors psychological assistance, the availability of mental health services is far from sufficient. As noted by one of UNHCR Turkey's contracted psychologists:

*Their psychological situation is very unique, since they are adolescents, refugees, and unaccompanied at the same time. In my professional opinion, if these kids are going to continue to stay at SHÇEK, serious investments will have to be made in their psychological care.*¹⁵³

3.5 Refugee and "Temporary Asylum" Status Determination Procedure and Resettlement Referral

*During my UNHCR interview, I felt a bit stressed. It took about an hour and a half. They told me it could take two years before I had a decision or would be resettled. I felt upset and discouraged then.*¹⁵⁴

International Standards

It is well established that any action taken on behalf of separated minors must take into account the "best interests of the child."¹⁵⁵ This principle underlies all the international guidance on the treatment of SMRs, including the manner in which refugee status determination (RSD) procedures are carried out.¹⁵⁶

As a starting point, all children should have access to asylum procedures.¹⁵⁷ They should never be subject to "manifestly unfounded," or accelerated procedures.¹⁵⁸ Decisions on their asylum claims

¹⁵² The Government of Turkey recently introduced citizenship ID numbers, which are now required to receive a variety of state services, including care in state hospitals. Legally resident foreigners are assigned compatible ID numbers upon the issuance of a residence permit. See section on Legal Guardianship, Representation and Residence, below.

¹⁵³ Dr. Nedret Oztan, UNHCR contracted clinical psychologist.

¹⁵⁴ Afghan minor.

¹⁵⁵ Convention on the Rights of the Child, *supra* note 23, Article 3(1); The Separated Children in Europe Programme, *supra* note 5, para. B.1; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 1.5.

¹⁵⁶ See, e.g., UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 10; The Separated Children in Europe Programme, *supra* note 5; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40.

¹⁵⁷ The Separated Children in Europe Programme, *supra* note 5, para. C.12(a); UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 6.

¹⁵⁸ The Separated Children in Europe Programme, *supra* note 5, para. C.12(a).

should be issued by a competent authority with expertise in asylum and refugee matters.¹⁵⁹ Their applications should be given priority and every effort should be made to reach a decision promptly and fairly.¹⁶⁰ Throughout the RSD procedure, separated minors should be represented by legal counsel,¹⁶¹ and benefit from the protection of a legal guardian,¹⁶² both free of charge. Their wishes should be elicited and considered throughout the process.¹⁶³ A qualified official, trained to take into account the special needs of separated minors, should interview sufficiently mature children for purposes of determining their refugee status.¹⁶⁴ Interviews should be conducted in a child-friendly and age-appropriate manner,¹⁶⁵ and interpreters used should also be specially trained on refugee and children's issues.¹⁶⁶

Refugee minors experience and describe persecution differently than adults, whether because of their age or level of maturity or other factors less well understood.¹⁶⁷ Where necessary, an independent expert should carry out an assessment of the child's ability to articulate a well-founded fear of persecution and identify any difficulties he or she may have recounting painful incidents or disclosing sensitive information.¹⁶⁸ If a child is not mature enough to provide information necessary to establish refugee status during an interview, decision-making authorities should look to "objective factors" in determining the child's status, including information relating to the child's community, country of origin and the circumstances of the child's family members.¹⁶⁹ Particular attention should be paid to the child's stage of development, his or her possibly limited knowledge of conditions in the country of origin, as well as his or her special vulnerability.¹⁷⁰

Decisions should be promptly issued to separated minors in person, so they are not kept in limbo for a long period of time regarding their status and their future.¹⁷¹ If a separated minor's asylum application is rejected, he or she and/or a legal representative should be able to seek a review of the decision, which should be carried out expeditiously and fairly.¹⁷²

¹⁵⁹ *Id.*, para. 12.1.1; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 8.2.

¹⁶⁰ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 66; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 8.1.

¹⁶¹ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 69; The Separated Children in Europe Programme, *supra* note 5, para. C.12(b); Convention on the Rights of the Child, *supra* note 23, Article 22(1); European Council on Refugees and Exiles (ECRE), "Position on Refugee Children," 1996, para. 24, http://www.ecre.org/resources/Policy_papers/243 [accessed December 12, 2009]; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, paras. 4.2, 8.3.

¹⁶² UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 69; The Separated Children in Europe Programme, *supra* note 5, paras. C.6, C.12.1.3; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 5.7.

¹⁶³ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, paras. 8, 70; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 5.15.

¹⁶⁴ Separated Children in Europe Programme, *supra* note 5, paras. C.7, C.12.1.3; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, paras. 8.2, 8.4.

¹⁶⁵ UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, paras. 5.8, 5.12.

¹⁶⁶ *Id.*, para. 5.13.

¹⁶⁷ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, paras. 2, 15, 72; Separated Children in Europe Programme, *supra* note 5, para. C.12.2.1.

¹⁶⁸ Separated Children in Europe Programme, *supra* note 5, para. C.12.1.2.; ECRE, "Position on Refugee Children," *supra* note 161, para. 27.

¹⁶⁹ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, paras. 12, 73; UN High Commissioner for Refugees, "Interviewing Applicants for Refugee Status (RLD 4)," 1995, p. 27, <http://www.unhcr.org/refworld/pdfid/3ccea3304.pdf> [accessed December 10, 2009].

¹⁷⁰ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, paras. 8, 15, 74; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 8.6.

¹⁷¹ *Id.*, para. 8.5; Separated Children in Europe Programme, *supra* note 5, para. C.12.1.1.

¹⁷² *Id.*

Rejected minor asylum seekers should not be subject to deportation proceedings until they reach 18 and should be provided state protection until that time.¹⁷³ A separated minor should only be returned to his or her country of origin if considered to be in the best interests of the child.¹⁷⁴ All other considerations, including the fight against illegal migration, should be secondary.¹⁷⁵

Law and Practice in Turkey

As discussed above,¹⁷⁶ asylum seekers in Turkey undergo two administratively distinct status determination proceedings conducted in parallel: the “temporary asylum” status determination procedure carried out by the Ministry of Interior (MOI) and the refugee status determination conducted by the UNHCR Turkey.

Ministry of Interior’s “Temporary Asylum” Procedure

The “temporary asylum” process consists of a registration interview and a status determination interview.¹⁷⁷ Following the status determination interview, a police officer from the Provincial Foreigners’ Police drafts a recommendation and refers the case to the Asylum Subdivision under the General Directorate of Security for a final status decision.¹⁷⁸

Special provision is to be made for the participation of a psychologist or expert social worker during interviews of SMRs. A report from a psychologist or social worker regarding an SMR applicant must be enclosed with the dossier that is sent to MOI for the finalization of an asylum status decision.¹⁷⁹

Most minor interviewees reported little difficulty registering with the police. They typically described extremely cursory registration interviews, often lasting only five minutes. As one noted: “At the police station, they copied my ID. They didn’t ask me any questions about me or my family.” While some reported that the police and the interpreters were unfriendly, only one reported significant difficulties registering, noting that when he brought a UNHCR police referral letter to the Ankara police, the officers “threw the paper in [his] face,” and refused to allow him to register.

A number of minors interviewed had been registered as “temporary asylum” applicants for several months. Delays in MOI status determination interviews appear to be related to the limited availability of Foreigners’ Police staff and interpreters. A critical result of these delays, however, is that authorities are deprived of an early opportunity to assess the protection needs and “best interests” of separated minors, as required by international law.¹⁸⁰

Very few of the minor interviewees had undergone an MOI status determination interview. One reported some of the difficulties associated with the process:

*My asylum interview with the police was long, about five hours. The police officer was not nice to me. I told her I stayed in a hotel in Izmir for 3 TL a night and she said that rate was impossible and that I was lying. She said that she was not convinced by what I told her and that she would have me deported. The interpreter made so many mistakes that I got upset and didn’t feel like answering. Then the social worker from SHÇEK who was with me was angry that I got the police upset...*¹⁸¹

¹⁷³ Separated Children in Europe Programme, *supra* note 5, para. C.13.6.2.

¹⁷⁴ *Id.*, para. C.13.6.1; UN Committee on the Rights of the Child, “CRC General Comment No. 6,” *supra* note 27, para. 84.

¹⁷⁵ Separated Children in Europe Programme, *supra* note 5, para. C.13.6.1.

¹⁷⁶ See section on “Asylum Procedures in Turkey,” above.

¹⁷⁷ Implementation Directive, *supra* note 7, Sections 5-10.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*, Section 6.

¹⁸⁰ See, e.g., Convention on the Rights of the Child, *supra* note 23, Articles 3(1), 20(1); Separated Children in Europe Programme, *supra* note 5, paras. C.7, C.13.3.

¹⁸¹ Somali minor.

hCa's files indicate when a separated minor has been recognized as a refugee by the UNHCR and a resettlement country is found, he or she is also generally granted "temporary asylum" status by the MOI; but only shortly before his or her departure to the resettlement country. However, in light of Turkey's preparation to take over status determination responsibilities from UNHCR,¹⁸² and its significant capacity building to that end, it is essential that MOI undertake the full evaluation of separated minors' temporary asylum claims. In the interim, MOI's considered review of these claims is a critical check if ever UNHCR incorrectly rejects an SMR's refugee application,¹⁸³ especially since Turkey bears the ultimate legal responsibility if a rejected refugee is deported to persecution.

If a separated minor's "temporary asylum" request is rejected, the decision may be challenged initially through MOI and then in administrative court.¹⁸⁴ However, in order for a minor to effectively access this right, he or she must be provided a legal representative and a guardian, which rarely take place in Turkey.¹⁸⁵ The law does provide that separated children be accorded state protection until they reach 18.¹⁸⁶ hCa is unaware of any SMRs identified as such by state authorities who have been deported.

UNHCR's "Refugee Status Determination" Procedure

UNHCR assumes a crucial role in finding "durable solutions" for SMRs, who, like other non-European refugees may not reside in Turkey permanently.¹⁸⁷ The UNHCR procedure involves registration and a refugee status determination interview, following which, the refugee claim is ultimately either granted or rejected.¹⁸⁸ Rejected asylum seekers may appeal or may request that their closed cases are reopened and re-examined.¹⁸⁹ Whenever possible, UNHCR refers recognized refugees for resettlement, mostly to the U.S., Canada or Australia. In almost all cases, however, UNHCR waits until a separated minor turns 18 before making a resettlement referral. A range of UNHCR guidelines govern the treatment of SMRs during the RSD procedure.¹⁹⁰

¹⁸² See, e.g., European Commission, "Establishment of a Reception, Screening and Accommodation System (Centers) for Asylum Seekers and Refugees: Standard Summary Project Fiche," Project No. TR 07 02 17, Twinning No. TR 07 IB JH 03, p. 5, http://ec.europa.eu/enlargement/pdf/turkey/ipa/tr_07_02_17_reception_centres_en.pdf [accessed December 10, 2009]. In this project statement, the Ministry of Interior of the Republic of Turkey (MOI) states that it "will need to take over the full responsibility for reception and status determination of asylum seekers in the future by 2012. The facilities will pilot a joint asylum procedure between the Government of Turkey and UNHCR as a transition measure before the MOI will take full responsibility for refugee status determination."

¹⁸³ See, e.g., *D. and others v. Turkey*, 24245/03, Council of Europe: European Court of Human Rights, June 22, 2006, <http://www.unhcr.org/refworld/docid/44b7ac2b4.html> [accessed December 10, 2009].

¹⁸⁴ Implementation Directive, *supra* note 7, Section 12. It should be noted that applications to administrative courts against acts and actions of the administration do not have an "automatic suspensive effect" in Turkey; rather, a separate request must be filed with the competent court for a "halt of execution order," which may or may not be granted. Furthermore, the administrative courts in Turkey are slow to respond to requests involving imminent deportation threats. Recent European Court of Human Rights case law against Turkey has established that there is no "effective remedy" in Turkey in situations involving contested removal decisions against rejected asylum applicants. See, *Abdolkhani and Karimnia v. Turkey*, Appl. No. 30471/08, Council of Europe: European Court of Human Rights, September 22, 2009, <http://www.unhcr.org/refworld/docid/4ab8a1a42.html> [accessed December 12, 2009]; *D. and others v. Turkey*, *supra* note 183; *Jabari v. Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, July 11, 2000, <http://www.unhcr.org/refworld/docid/3ae6b6dac.html> [accessed December 10, 2009].

¹⁸⁵ See section on "Legal Guardianship, Representation and Residence," below.

¹⁸⁶ According to Article 22 of the Law on SHÇEK, state protection is to be granted to all "children in need of protection" until they reach the age of 18. The Social Services and Child Protection Agency Act, *supra* note 92.

¹⁸⁷ See section on "Asylum Procedures in Turkey," above.

¹⁸⁸ For details on the UNHCR procedure, see, UNHCR, "Procedural Standards for RSD," *supra* note 59.

¹⁸⁹ *Id.*, Unit 7 (appeal) and Unit 9 (reopening).

¹⁹⁰ UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16; UNHCR, "Procedural Standards for RSD," *supra* note 59, *passim*; UNHCR, "Interviewing Applicants for Refugee Status," *supra* note 169, p. 27; UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, paras. 8.1-8.10.

Most minor interviewees first had contact with the UNHCR in Istanbul through its implementing partner, the Human Resource Development Foundation.¹⁹¹ None reported any problems during their reception or UNHCR registration. A few had approached the UNHCR Branch Office in Ankara to register. Only one described difficulties registering in Ankara, reporting that although he showed UNHCR gate staff his birth certificate, he was turned away and told to return at a later date.¹⁹²

Most minors reported that UNHCR staff and interpreters were pleasant and helpful during their RSD interview. They described being informed of the RSD process and its possible outcomes, delivered in a way they could understand. A few, however, reported feeling intimidated by the UNHCR officer conducting the interview. "I think the interviewer was mad at me," one said, "maybe because I was not explaining myself well."¹⁹³ Another noted:

*The interviewer asked short questions and wanted short answers. At the end of the interview, I was asked if I wanted to say anything but the interviewer spoke with me in an aggressive tone. It was as if the interviewer did not want me to say anything else. So I remained silent.*¹⁹⁴

Although SMRs "must be processed on a priority basis,"¹⁹⁵ some interviewees reported waiting weeks or months after registration to be interviewed, and many waited months or years to be issued a decision. A file review indicates that Afghan minors waited longer than other minors to be issued decisions on their claims, in some cases for two years or more. This was mostly due to UNHCR Ankara's overall policy regarding the Afghan caseload, which at the time of publication had been changed. As one Afghan boy described:

My biggest problem is waiting for the results. My only fear is: what will happen to me in a year's time? Others are quick to get their answers, but we Afghans have to wait so long.

UNHCR's policy to delay decisions regarding Afghan asylum seekers was clearly developed as a response to protection concerns faced by that community in Turkey. However, the resulting delays on minors' cases conflicts with the basic principle that once separated children have been admitted to the asylum process, their claims should be processed on an urgent basis so that they are not kept waiting for long periods of time.¹⁹⁶ Moreover, UNHCR's failure to inform minors of the postponement of decisions or provide a timeframe within which decisions would be issued conflicts with its own procedural standards.¹⁹⁷ The UNHCR has since changed its policy, and at the time of publication of this report, had begun to issue decisions on Afghan claims. While the protection-based rationale of the previous policy is understandable, the current policy brings UNHCR's practice into compliance with the letter and spirit of its procedural standards and recommendations regarding the treatment of separated minor refugees.

Resettlement Referral

Neither separated minor nor adult refugees have the right to be resettled in other countries after they are granted refugee status by UNHCR Turkey.¹⁹⁸ Nonetheless, the fact that minors are generally

¹⁹¹ Adult asylum seekers are generally required to travel to the UNHCR Branch Office in Ankara to be registered with the UNHCR. The UNHCR Field Office in Istanbul only registers SMRs and adult applicants considered exceptionally vulnerable.

¹⁹² Sudanese minor.

¹⁹³ Afghani minor.

¹⁹⁴ Eritrean minor.

¹⁹⁵ UNHCR, "Procedural Standards for RSD," *supra* note 59, Section 3.4.5.

¹⁹⁶ Separated Children in Europe Programme, *supra* note 5, para. C.12.1.1.

¹⁹⁷ UNHCR, "Procedural Standards for RSD," *supra* note 59, Sections 4.3.12, 4.5.

¹⁹⁸ See section on "Asylum Procedures in Turkey," above.

not resettled until after they turn 18 was one the most pressing concern raised by the minor interviewees. A file review indicates that many are not resettled until more than a year after turning 18. One minor, for example, waited seven months after turning 18 to be accepted for resettlement to Canada and another seven months to leave the country, totaling a 14-month wait. In the interim, SMRs have very few educational opportunities, face serious barriers accessing healthcare, and after turning 18, must arrange for their own accommodation and pay their own living expenses.

The psychological impact of this waiting period has taken its toll on many separated minors, who describe feelings of frustration, anger, depression and a general sense of hopelessness. Many others are simply anxious to get on with their education and the rest of their lives. As a Somali minor described:

If you say I will be resettled in another country, this would be my cure. I want to leave this place within a year. I want to go to school and I want to search for my family... We are kids, and it will be more difficult for us to adjust when we are older. Now we are at the education age. We have to get education to have a proper future.

The practice of delaying resettlement until minors turn 18 appears to reflect the concerns of resettlement countries and UNHCR that the resettlement of separated minors will support trafficking or influence parents to send minor children westward. The result, however, is that SMRs in Turkey are kept in transit for years, deprived of adequate access to education, healthcare, and other forms of support. It also undermines the logic of expediting minors' asylum claims so that, as per UNHCR guidelines, they are not kept "in limbo for a long period of time regarding their status and their future."¹⁹⁹ The delay also appears to be a push factor for minors' westward migration: a number of those known to hCa have left Turkey illegally for European countries, despite the well-known associated risks. Their friends report that the long wait for recognition and resettlement played a significant role in their decision to leave. In this way, delayed resettlement unintentionally plays a role in SMRs' irregular migration westward.

3.6 Guardianship, Legal Representation and Residence Permits

International Law and Standards

Once under state protection, a range of decisions must be made for and with the input of SMRs, including those relating to medical treatment, education and accommodation. International standards require that those decisions be made by a guardian, someone legally authorized to represent the child in the absence of his or her parents,²⁰⁰ and for whom the child's best interests (not those of any authority or institution) are primary.²⁰¹

The presence of a single, permanent contact person, responsible for promoting the minor's best interests is so fundamental to a child's well-being that international guidelines recommend that a guardian be appointed as soon as a separated child is identified.²⁰²

¹⁹⁹ UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 8.5.

²⁰⁰ See, e.g., Council of the European Union, "EU Council Directive 2003/9/EC Laying Down Minimum Standards for the Reception of Asylum Seekers," February 6, 2003, Article 3(5), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF> [accessed December 10, 2009]; UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 69.

²⁰¹ Convention on the Rights of the Child, *supra* note 23, Article 18(1).

²⁰² UNHCR, "Guidelines on Child Asylum Claims," *supra* note 16, para. 69; Separated Children in Europe Programme, *supra* note 5, para. C.6. See also, Council of Europe, "Resolution on Unaccompanied Minors," *supra* note 34, which requires that member states provide, as soon as possible for the necessary representation of the minor, "(a) legal guardianship, or (b) representation by a (national) organization which is responsible for the care and wellbeing of the minor, or (c) other appropriate representation." See also, Council of the European Union, "Directive on Minimum Reception Standards," *supra* note 200, Article 19(1). See also, UNHCR, "1997 Guidelines on Unaccompanied Children Seeking Asylum," *supra* note 40, para. 4.2.

Guardians for SMRs should be appointed by an independent and formally accredited organization,²⁰³ and should be provided sufficient state assistance to carry out their obligations to the minors in their charge.²⁰⁴

Legal guardians have “the primary responsibility for the upbringing and development of the child.”²⁰⁵ They are also responsible for ensuring that minors are provided legal representation during all legal proceedings, including refugee status determination (RSD) procedures.²⁰⁶ Throughout the RSD process, guardians are similarly responsible for ensuring that a minor’s views are expressed, and that any decisions taken are in his or her best interests.²⁰⁷

SMRs must also be provided free legal representation outside the RSD process, including to legalize their status in countries of asylum,²⁰⁸ or if they face criminal charges.²⁰⁹

Law and Practice in Turkey

Guardianship

Under Turkey’s Child Protection Law, an application may be made to a competent court requesting that a child be placed in state care.²¹⁰ Children in need of state protection “without delay,” may be taken under SHÇEK care without a court order, provided that a request for an “urgent protection measure” be filed with the court within five days.²¹¹

During a preliminary 30-day stay in a SHÇEK facility, staff complete a “social evaluation report,” equivalent to what is more commonly known as a “best interests determination,” following which, SHÇEK determines whether to request that the court authorize continued state protection for the child.²¹²

Following placement in state care, domestic law requires that minors be assigned a guardian. According to the Civil Code of Turkey,²¹³ all children who do not benefit from the custody (*velayet*) of parents must be provided guardianship (*vesayet*).²¹⁴ The assignment of guardians is carried out by Peace Courts of Civil Jurisdiction (*Sulh Hukuk Mahkemesi*) and guardianship matters are thereafter overseen by Civil Courts of General Jurisdiction (*Asliye Hukuk Mahkemesi*).²¹⁵ A guardian should be

²⁰³ UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, para. 5.7.

²⁰⁴ Convention on the Rights of the Child, *supra* note 23, Article 18(2).

²⁰⁵ *Id.*, Article 18(1).

²⁰⁶ UNHCR, “Procedural Standards for RSD,” *supra* note 59, Section 3.4.5. See also, UNHCR, “1997 Guidelines on Unaccompanied Children Seeking Asylum,” *supra* note 40, para. 8.3.

²⁰⁷ UNHCR, “Procedural Standards for RSD,” *supra* note 59, Section 3.4.5.

²⁰⁸ Separated Children in Europe Programme, *supra* note 5, para. C.12.

²⁰⁹ Convention on the Rights of the Child, *supra* note 23, Article 40(2). That provision requires states to ensure a child accused of a crime “have legal or other appropriate assistance in the preparation and presentation of his or her defence.” The European Convention on Human Rights, of which Turkey is a party, also contains a right to representation and free interpretation for all persons criminally charged. See, Council of Europe, “European Convention on Human Rights,” November 4, 1950, Article 6(3), <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf> [accessed December 10, 2009].

²¹⁰ Child Protection Law, *supra* note 23, Article 7. Parents, guardians, persons responsible for the child, SHÇEK or the local Prosecutor’s Office can file a request with the competent Children’s Court for a child to be taken into state protection.

²¹¹ *Id.*

²¹² *Id.*, Article 9.

²¹³ “Türk Medeni Kanunu No. 4721” (Civil Code of Turkey No. 4721), November 22, 2001.

²¹⁴ *Id.*, Article 404. That Article also provides that administrative authorities, notaries and courts, among others, who are presented with a situation requiring the assignment of a guardian while performing their duties, are obligated to engage the relevant local court designated to take charge of guardianship matters.

²¹⁵ *Id.*, Article 397.

“an adult competent to fulfill the requirements of the task,”²¹⁶ not engaged in an “immoral life style” or have “significant conflict of interest or hostility with the child in question.”²¹⁷ Relatives are to be given priority as guardians.²¹⁸ In theory, qualified NGO, UNHCR or SHÇEK staff, or other refugees could be assigned to be the guardians of SMRs.

Guardians are responsible for protecting the personal and material interests of the minors in their care, and to represent their interests in legal proceedings.²¹⁹ Although not specified in the Civil Code, this would include “temporary asylum” status determination procedures with national authorities and RSD proceedings at the UNHCR. As a rule, a guardian is appointed for two years, and thereafter may be reappointed by the court for additional two-year terms.²²⁰ The Civil Code also entails provisions for the appointment of trustees (*kayyim*), who may be appointed to carry out specific duties²²¹ on behalf of a child. The law also includes provisions regarding the payment of guardians and trustees, but does not specify payment rates or funding sources.²²²

No distinction between citizen and foreign minors is set out in either the Child Protection Law or Civil Code. As such, these laws should benefit separated minor refugees. In practice, however, none of the minors interviewed for this report or known to hCa have been admitted into SHÇEK care pursuant to the provisions in the Child Protection Law. Some minor refugees, however, did report being granted “guest approval” by the local Governor’s Office to reside in their respective SHÇEK facilities. Only one separated minor is known to have been provided a court-appointed trustee, after significant advocacy on the part of UNHCR and its implementing partner, the Association for Solidarity with Asylum Seekers and Migrants.²²³

None of the minors known to hCa have been provided individual court-appointed legal guardians, often with severe consequences. By way of example, when 15- and 13-year-old brothers escaped from SHÇEK care in search of their father, they spent two months living in a hotel in Izmir.²²⁴ The older boy was then mugged, beaten, hospitalized, arrested and detained in poor conditions for 10 days with a group of adult migrants. After his release and return to the SHÇEK facility, his 13-year-old brother was eventually located, having spent 20 days in detention in Izmir in similarly substandard conditions alongside adults. Both minors were seriously traumatized by the experience.²²⁵ The older boy was subsequently criminally charged for residing outside the province to which he was assigned.²²⁶ Had these minor refugees been appointed legal guardians, from

²¹⁶ Id., Article 413.

²¹⁷ Id., Article 418.

²¹⁸ Id., Article 414.

²¹⁹ Id., Articles 445-448.

²²⁰ Id., Article 456.

²²¹ Id., Article 403. The rules and procedures regarding the appointment and duties of trustees are identical to those outlined for guardians.

²²² Id., Article 457.

²²³ hCa was advised of one case in which a trustee was assigned to an Afghan minor refugee living in Niğde. In that case, the UNHCR and its implementing partner ASAM successfully advocated for the appointment of an ASAM employee as trustee to obtain a protection order for the minor and oversee his asylum proceedings in Turkey.

²²⁴ The boys stayed in the Basmane neighborhood in Izmir. Izmir, the largest urban center on Turkey’s Aegean coast, is an important transit destination for migrants and refugees heading for Europe by sea. As reported by the Izmir-based NGO Multeci-Der, it is estimated that at any time, there are between 500 to 1,000 migrants and refugees in the city. Migrants and refugees arriving in Izmir tend to gather in the Basmane neighborhood, where they find temporary accommodation in one of the dozens of small hotels in the area. Most of them stay only a few days or a week, until able to board a boat headed to a Greek island. Those who cannot find the money to pay smugglers may end up staying in Izmir for several months. There is extremely limited financial and social assistance available for refugees and migrants in Izmir, mainly coordinated by Multeci-Der and provided by the municipality.

²²⁵ hCa’s psychiatric staff assessment notes, August - December 2008.

²²⁶ This minor was charged under the “Yabancıların İkamet ve Seyahatleri Hakkında Kanun No. 5683” (Law on the Residence and Travel of Foreigners in Turkey No. 5683), June 15, 1950, Article 17. Article 25 of that law

whom they could have received individualized support, many of these events may have been prevented.

The failure to appoint SMRs guardians violates domestic and international law and guidelines. As noted by a UNHCR Senior Refugee Law Training Officer:

By dealing with SMRs without a legal guardian appointed, we are actually in serious violation of our own procedural standards. We make very important decisions for them, like for instance on the question of resettlement. One should also note that since Turkey is a EU accession country, to put in place a functioning trustee and guardianship system for SMRs is a requirement that flows from the EU Acquis.²²⁷

The fact that separated minor refugees lack legal identification documents – whether in the form of valid travel documents or residence permits in Turkey – appears to play a significant role in the inability to legally appoint them guardians. As noted by the director of a SHÇEK facility in Izmir:

The guardianship procedure takes time. And generally the staff here do not want to get involved with this because you have to run around courthouses all the time. You need certain documents to appoint a guardian, such as a Turkish identity document, so for SMR this is a problem. Courts decide based on documentation, so the necessary legal infrastructure needs to be developed for SMRs.²²⁸

Clearly, training for SHÇEK staff and members of the judiciary can play a valuable part in ensuring that their guardianship needs are met:

When SHÇEK applies for a Protection Order at Children’s Court, they can apply for guardianship at the same time. However, the SHÇEK staff will need legal advice to recognize this possibility. At the same time, courts will have to be alerted that unaccompanied minors are protected by the same laws and standards as Turkish children.²²⁹

While hCa was unable to gather sufficient information to evaluate the full level of implementation of domestic guardianship provisions to SMRs across Turkey,²³⁰ at least anecdotally, it appears that a significant gap exists between law and practice. “By shelving the guardianship procedures for these children and dealing with them in this way,” said Nihat Tarimeri, social worker and child protection specialist, “we are simply contributing to the de facto situation which is not in compliance with the law.”

The SHÇEK circular issued in March 2010 also fails to mention whether and how SMRs can be appointed individual guardians.

Legal Representation

Turkey’s Criminal Procedure law requires that a lawyer appointed by the local bar association be present in all criminal proceedings involving a child.²³¹ An interpreter must be employed if the

authorizes imprisonment from one month to two years for violations of the residential requirement. While other children have fled SHÇEK centers, according to staff of the SHÇEK Kadıköy Yeldeğirmeni facility, this was the first time they were aware of criminal proceedings brought against a separated minor refugee for escaping a facility. At the time of publication, the case was still pending.

²²⁷ Senior Refugee Law Training Officer, UNHCR BO Ankara.

²²⁸ Director of the SHÇEK “Dokuz Eylül” Boys’ Home in Buca district of Izmir.

²²⁹ Türcay Asma, Ankara Bar Association, Head of Children’s Rights Commission.

²³⁰ Three requests by hCa researchers to interview SHÇEK officials to address guardianship, among other issues, were denied.

²³¹ Ceza Muhakemesi Kanunu No. 5271” (Law on Criminal Procedures No. 5271), Article 150. See also, “Ceza Muhakemesi Kanunu Gereğince Müdafî ve Vekillerin Görevlendirilmesi ile Yapılacak Ödemelerin Usul ve Esaslarına İlişkin Yönetmelik No. 26450” (Directive regarding the Procedures and Principles on the Appointment

accused does not speak and understand sufficient Turkish.²³² Data gathered for this report indicates that SMRs have benefited from free legal representation and interpretation during criminal proceedings in Turkey: in at least two criminal cases, lawyers and interpreters were assigned.²³³ However, the failure to identify SMRs,²³⁴ means that countless SMRs criminally charged for irregular entry or presence in Turkey go without the legal representation they are guaranteed under domestic law.

SMRs, though not legally prohibited from retaining legal representation in non-criminal matters, face significant barriers doing so. The central obstacle is the requirement that, like others retaining legal representation, they provide a notarized “power of attorney” to formalize the agreement between themselves and a lawyer.²³⁵ Since SMRs are rarely able to produce passports, residence permits or other documents relied on by notaries to establish their identity,²³⁶ they are often denied powers of attorney. Although notaries may in such circumstances legally rely on the testimony of witnesses who can attest to the identity of the applicant,²³⁷ in practice, this rarely happens.

Similarly, there are no obstacles to the legal representation of a minor during asylum proceedings.²³⁸ Despite this, a request by hCa to represent a traumatized minor during his asylum interview was denied. Authorities orally informed hCa’s lawyer that despite a notarized power of attorney, an MOI circular provided that “legal representatives should not be allowed to participate in asylum status determination interviews” and “asylum requests filed by legal representatives should not be processed.”²³⁹ Conversely, legal advisors and lawyers regularly represent SMRs during UNHCR Turkey’s refugee status determination procedure.²⁴⁰ While this is not the case in all UNHCR offices worldwide,²⁴¹ UNHCR Turkey has consistently supported the right of asylum seekers to legal representation during its procedures.²⁴²

and Payment of Defence Lawyers in accordance with the Law on Criminal Procedures No. 26450), March 2, 2007, Article 5(2).

²³² Law on Criminal Procedures, *supra* note 231, Article 202.

²³³ One case involved an hCa client and the other was reported to hCa by Izmir-based NGO Mülteci-Der. In both cases, lawyers were appointed to the children concerned. In one of the cases, an interpreter was provided, while in the other, it was determined that the SMR spoke sufficient Turkish to function without one.

²³⁴ See section on “Identification and Interim Care,” above.

²³⁵ Noterlik Kanunu Yönetmeliği No. 15645 (Directive on the Law of Notary’s Offices No. 15645), July 13, 1976, Articles 90, 91.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Minors are only prohibited from securing a power of attorney on the basis of their age if a particular legal procedure requires the parties to be over 18. See, *Id.*, Article 91. This is clearly not a limitation in asylum proceedings.

²³⁹ In response, hCa filed a complaint with the Center for Lawyers’ Rights at the Istanbul Bar Association, requesting an inquiry into the existence of the circular and any necessary legal action seeking its annulment based on its violation of a lawyer’s right to represent clients in all legal proceedings. See, “Avukatlık Kanunu No. 1136” (Law on the Legal Profession No. 1136). hCa’s request remains pending.

²⁴⁰ Legal representation during RSD procedures is specifically permitted and regulated. See, UNHCR, “Procedural Standards for RSD,” *supra* note 59, Section 4.3.3.

²⁴¹ See, e.g., RSDWatch.org, “No Margin for Error: Monitoring the fairness of refugee status determination procedures at selected UNHCR field offices in 2007,” June 2008, <http://www.rsdwatch.org/NoMarginForError2007.pdf> [accessed December 10, 2009]. The report documents the fact that UNHCR offices in Cambodia and Hong Kong limit the right to counsel during RSD proceedings and cites UNHCR Turkey as being in full compliance with the right to legal representation set out in UNHCR’s 2005 Procedural Standards for RSD under UNHCR’s Mandate.

²⁴² See, e.g., Helsinki Citizens’ Assembly, “An Evaluation of UNHCR Turkey’s Compliance with UNHCR’s RSD Procedural Standards,” September 2007, p. 7, <http://www.hyd.org.tr/?pid=554> [accessed December 10, 2009].

Residence Permits

Domestic law requires that foreigners obtain a “residence permit” in order to be allowed to reside in Turkey for an extended period of time.²⁴³ Asylum applicants, including SMRs, are no exception. Local branches of the Foreigners’ Police issue residence permits to asylum applicants, which are valid for six months and thereafter periodically renewable.²⁴⁴

Residence permits not only constitute recognition of an asylum applicant’s legal right to remain in Turkey, but also are a prerequisite for accessing education, healthcare and other state services.

The fees associated with securing a residence permit, and the fines for the failure to pay fees, are prohibitively high for most refugees.²⁴⁵ Those who can prove that they do not have the means to pay associated fees may be exempt from payment,²⁴⁶ though the exemption is rarely applied to asylum applicants.²⁴⁷ Minors 15-18 pay just slightly less than adults in residence fees, while those under 15 pay half.²⁴⁸

Evidence gathered from SMRs, UNHCR and SHÇEK staff indicates that the vast majority of minors legally registered with the Istanbul Police as asylum applicants have not been issued residence permits. Some have been waiting as long as two years or more to be provided an appointment by the Foreigners’ Police to initiate the residence permit process.²⁴⁹ The few who were notified that they would be issued residence permits were not exempt from associated fees and fines, which they were unable to pay.²⁵⁰ Without residence permits, SMRs cannot be issued identification numbers compatible with the state services system, which in turn severely limits their access to healthcare, education and other services.²⁵¹

hCa initiated a test case in Administrative Court challenging the state’s failure to exempt a minor in SHÇEK care from residence permit fees and fines. The Court rejected the application on April 29, 2010 finding that there is no evidence indicating that the SMR under state protection is unable

²⁴³ “Yabancıların Türkiye’de İkamet ve Seyahatleri Hakkında Kanun No. 5687” (Law on Sojourn and Movement of Aliens No. 5687), July 24, 1950.

²⁴⁴ See, Implementation Directive, *supra* note 7, Section 11 on “Cases where Residence Permit can be granted Ex-Officio” (i.e. cases to be processed under the regular procedure).

²⁴⁵ There are two items of expense associated with a residence permit: the “document fee” (defter bedeli), which is collected once, upon the issuance of the residence permit, and the “residence tax” (ikamet harcı), which is to be paid for each six month period of stay. The amounts are set by the Ministry of Finance each year, in accordance with the relevant legislation, “Değerli Kağıtlar Kanunu No. 210” (Law on the Issuance of Administrative Documents No. 210), and “Harçlar Kanunu No. 492” (Law on Collection of Fees No. 492) respectively. In 2009, a six-month residence permit (the “residence tax”) cost 306.30 TL (\$194 USD or €160) per person plus an additional 135 TL (\$85 USD or €70) for the residence permit booklet (the “document fee”), which only needs to be purchased once. Fees for 2010 have increased by about 8%.

²⁴⁶ “Harçlar Kanunu No. 492” (Law on Collection of Fees No. 492), Article 88(d).

²⁴⁷ Helsinki Citizens’ Assembly, Human Rights Research Association, Human Rights Association, Human Rights Agenda Association, Mazlum-Der, Association of Solidarity with Refugees, Association for Solidarity with Asylum Seekers and Migrants, Amnesty International Turkey, “Residence Fees Charged to Asylum Seekers: Fee or Extortion?” October 25, 2009, <http://www.hyd.org.tr/?pid=770> [accessed December 10, 2009].

²⁴⁸ “Harçlar Kanunu No. 492” (Law on Collection of Fees No. 492), Article 91. In 2009, a six-month residence permit cost 306.30 TL for adults and 288.15 TL for those 15 to 18.

²⁴⁹ hCa file notes.

²⁵⁰ For example, while Foreigners’ Police informed two hCa clients that they would be issued residence permits, they were not provided fee exemptions and were required to pay approximately 1.500 TL (\$950 USD or €780) and 520 TL (\$329 USD or €270) in fees and fines, which they could not pay. As a result, the minors were not issued residence permits. hCa file notes.

²⁵¹ Foreigners issued a residence permit to stay in Turkey for at least six months should be issued compatible identification numbers by the local Directorate of Population Registry. See, “Nüfus Hizmetleri Kanunu No. 5490” (Law on Population Registry Services No. 5490), Articles 8, 46. See also, Türkiye’de Oturan Yabancıların Nüfus Kayıtları’nın Tutulması Hakkında Yönetmelik No. 26325” (Directive on the Population Registry of Foreigners Living in Turkey No. 26325), October 26, 2006, Article 5.

to pay the requested residence permit fees and fines which amounted to approximately 1500TL (\$950 USD or €780).²⁵² Similarly, a group of refugee-assisting NGOs issued a joint press release opposing the practice,²⁵³ and Amnesty International Turkey initiated an advocacy campaign on the issue.²⁵⁴

The applicability of residence permit fees to asylum seekers and refugees, including SMRs, is currently under review by the Government of Turkey.²⁵⁵ MOI officials have unofficially acknowledged that all asylum seekers and refugees will be exempt from paying residence permit fees under the new Asylum Law, which at the time of publication, was still at the drafting stage with the projection of being submitted to Parliamentary in 2011. In the interim, MOI issued a circular ordering Provincial Security Directorates to assess the financial resources of asylum seekers and refugees who request fee exemptions and issue residence permits free of charge to those determined to be destitute.²⁵⁶ The circular also orders authorities to issue residence permits free of charge if they cannot prove false an applicant's claim of destitution within 15 days of the date of his or her application. Without a doubt, the elimination of residence fees and fines will play a vital role in ensuring that SMRs can freely access healthcare, education and other services to which they are entitled under domestic and international law.

²⁵² hCa file notes. hCa's appeal of this Court decision was pending at the time of publication.

²⁵³ Helsinki Citizens' Assembly, et al., *supra* note 247.

²⁵⁴ Amnesty International, "Türkiye: Mülteciler İçin İkamet Harcını Kaldırın!" (Turkey: Eliminate Residence Fees for Refugees!), EUR 44/002/2009, 2009.

²⁵⁵ On November 11, 2009, Hulusi Guvel, a Member of Parliament from the CHP, delivered a speech at the Parliamentary Planning and Budget Commission, and has subsequently drafted a proposed amendment to Article 88 of the Law on Collection of Fees (No. 492) explicitly exempting asylum seekers from the payment of residence fees. hCa correspondence files.

²⁵⁶ Ministry of Interior, "Mülteci ve Sığınmacılar No. B.050.OKM.0000.12/2010/19" (Circular on Refugees and Asylum Seekers No. B.050.OKM.0000.12/2010/19), March 19, 2010, Section 1.

4. RECOMMENDATIONS

*Separated children are entitled to the same treatment and rights as national or resident children. They should be treated as children first and foremost. All considerations of their immigration status should be secondary.*²⁵⁷

4.1 To the Government of Turkey

- Treat separated minor refugees as children first, before considering their status as asylum seekers. Uphold their rights under international and domestic law.
- Provide SMRs equal access to all rights granted to children who are citizens.
- Train state employees on the rights and needs of SMRs and to carry out their mandates accordingly.
- Train and fund interpreters to be used in all state agencies working with SMRs.
- Raise awareness regarding the rights and situation of separate minor refugees by collaborating with UNHCR, children's rights and refugee rights NGOs.

Identification and Interim Care

- Except as a last resort, do not detain separated minors, whether in Removal Centers or other places of detention.
- Amend the 2006 Implementation Directive to explicitly prohibit the detention of minor refugees, including during the age determination or SHÇEK pre-admission process. Include a similar provision in any new asylum law. Develop and implement alternatives to the detention of SMRs consistent with international best practices.
- Train security forces, particularly at borders and areas of frequent irregular migrant traffic, and prosecutors, who bring cases against individuals intercepted for irregular presence, to identify and assist SMRs. Provide them general training on asylum procedures. Training should include the right of children apprehended at borders to seek asylum, their rights and vulnerabilities, and child-friendly, culturally-appropriate interviewing techniques. Provide further training on the identification of child victims of trafficking who are also vulnerable and may also be refugees.²⁵⁸
- Immediately after their identification, place SMRs in suitable interim care, where care authorities can carefully assess their needs. Keep changes in care arrangements to a minimum. To facilitate the provision of child-friendly interim care arrangements, fund the development of legally-mandated and appropriate "Child Care Units" in Children's Police departments.
- Train security forces to adhere to the Children's Branch Directive. Ensure that no branch of the security forces, other than the Children's Branch, initiates proceedings with respect to SMRs other than guarding them until they are transferred to the Children's Police in the shortest period of time possible. Children identified at borders or provincial areas should be referred to the closest town in which Children's Police are present.

²⁵⁷ Separated Children in Europe Programme, *supra* note 5, para. B.2.

²⁵⁸ For further guidance on the recommendation for training border officials, see, Council of Europe, "Parliamentary Assembly Recommendation 1309 (1996) on the Training of Officials Receiving Asylum Seekers at Border Points," November 7, 1996, <http://assembly.coe.int/Documents/AdoptedText/TA96/EREC1309.HTM> [accessed December 10, 2009].

- Train Children's Branch personnel to adhere to the Children's Branch Directive.
- Ensure that a social worker is present at the first interview of an SMR, that trained, qualified interpreters are used when required, and that the Children's Branch remains in charge of any interim care arrangements provided to SMRs until their delivery to SHÇEK care. Ensure that no arms worn by Childrens' Police are visible to SMRs.
- As soon as they are identified and as often as necessary, provide SMRs information about the asylum procedure, age determination testing, child protection procedures, and their right to access healthcare, education, accommodation, and other social services. Information should be provided to SMRs in written and oral form in an age- appropriate manner and in a language they understand, using trained, qualified interpreters as required.
- Give SMRs the benefit of the doubt with regard to their declared age, even if a child's identity documents list his or her age as over 18.
- Where an age assessment test is considered necessary, ensure it is holistic, taking into account physical, cognitive, behavioral and emotional factors. Experienced, independent professionals should carry out age tests in a gender- and culturally-sensitive manner. Testing technology should be safe and respect the human dignity of the child being tested. Conduct age tests with informed consent. Allow SMRs to reside in child-friendly state facilities while waiting for age determination test results.
- Allow SMRs to apply for asylum. Ensure that the refugee status determination process is commenced as soon as possible after their identification so that a durable solution to their displacement may be achieved as early as possible.

Long-term Care

- Place SMRs in institutional care as a last resort. Develop community care options involving families from the same countries of origin or language as SMRs as an alternative to accommodation in SHÇEK facilities. Develop appropriate monitoring systems and allocate sufficient resources to ensure their success.
- Ensure all care decisions are made in consultation with SMRs. Provide SMRs every opportunity to express their views and preferences regarding their care, including any changes to be made in their care arrangements.
- Periodically re-assess all SMRs' protection needs. Ensure evaluations are conducted by qualified child specialists, with training on refugees issues.
- Train SHÇEK staff on asylum law, SMRs' rights and entitlements, and intercultural communication and conflict resolution skills.
- Provide adequate numbers of trained, qualified interpreters on a full-time basis in all SHÇEK facilities where SMRs are accommodated. Train interpreters on child-friendly, culturally-appropriate interpreting techniques. Provide the budgetary allocation to allow for the recruitment, training and compensation of interpreters.
- Support the integration of SMRs accommodated in SHÇEK facilities into local communities. Ensure they have adequate access to recreational activities and clothing.
- Trace SMRs' family members through the Red Crescent and by investigating leads provided by SMRs to state agencies.
- Continue to allow SMRs to freely come and go from SHÇEK facilities, especially in order to access education, health, mental health, legal and other services and activities supporting their growth and development.

- Provide transition assistance to SMRs who turn 18. In collaboration with UNHCR, children’s rights and refugee rights NGOs, prepare SMRs for independent living by providing counseling and detailed information in a child-friendly, culturally- appropriate manner and in a language they understand. Develop a specialized counseling module for use by trained experts. Allow vulnerable refugees who turn 18 to stay in SHÇEK care as long as necessary up to an additional two years. Invest in interim accommodation for minors who “age out” of state care.

Education

- Provide SMRs the same educational opportunities available to children who are citizens.
- Enroll SMRs in schools, informal education facilities or vocational training as soon as possible after their arrival.
- Solicit and consider the views of SMRs regarding their educational options.
- Train educational authorities to apply relevant domestic laws to SMRs.
- Prohibit Turkish language proficiency to be used as a basis to limit SMRs’ access to education.
- Prohibit educational authorities from enrolling SMRs as “guests” in secondary schools, so that upon graduation, they can be issued diplomas.
- Explicitly exempt in secondary education regulations refugee children from providing documentary evidence of previous education.
- Implement mechanisms to evaluate SMRs’ previous education experience and level of schooling, in the absence of formal documentation.
- Provide necessary funding for tuition, books and travel costs to facilitate SMRs’ access to public and informal education.
- Remove administrative barriers facing trained volunteer teachers and NGOs wishing to provide courses and workshops at SHÇEK facilities.

Healthcare

- Provide SMRs the same access to healthcare services as children who are citizens.
- Take all necessary steps to promote the physical and mental health of SMRs, focusing on the special needs of child victims of trauma, torture and armed conflict.
- Promptly issue SMRs residence permits and identification numbers compatible with the state service system to ensure they can access free healthcare and medication.
- Train medical and mental health staff on child-friendly, culturally-appropriate service provision.
- Provide adequate numbers of qualified interpreters during physical and mental health treatment. Train medical interpreters on child-friendly, culturally-appropriate interpreting techniques.
- Conduct all medical tests and procedures with informed consent by SMRs and their legal guardians. Communicate the purpose of all tests and procedures in a child-friendly, culturally-appropriate manner, in a language understood by SMRs. Provide SMRs and their legal guardians all test results.
- Conduct mental health assessments of SMRs as necessary and provide treatment as required. Ensure that mental health evaluations are only conducted when appropriate to avoid re-traumatization. Ensure that mental healthcare is provided by qualified professionals familiar with the treatment of trauma survivors and the experiences of child refugees.

- Review the immunization status of all SMRs and provide catch-up immunization as necessary.

“Temporary Asylum” Status Determination Procedure

- Ensure that SMRs’ asylum status determination proceedings are conducted by officers trained in refugee law, child-friendly and culturally appropriate interviewing techniques, and are familiar with legal principles applicable to child asylum seekers. Ensure that a qualified psychologist or social worker is present during the interview. Employ qualified interpreters trained on refugee and children’s protection issues as necessary.
- Allow SMRs’ legal representatives to be present at all status determination interviews and throughout the status determination procedure.
- If a minor is not sufficiently mature enough to provide information necessary to establish “temporary asylum seeker” status during an interview, review information relating to the child’s community, country of origin and the circumstances of the child’s family members, in determining the child’s status.
- Schedule and conduct SMRs’ asylum status determination interviews without delay and on a priority basis.
- Increase staff capacity to avoid processing delays.
- Issue positive asylum status decisions formally to guarantee that recognized separated minor asylum seekers may access healthcare, other social services and full legal protection from *refoulement*. Inform SMRs of processing delays and provide a general timeframe for delayed decisions to be issued.
- Conduct an independent assessment of any case rejected by UNHCR to ensure that the SMR’s international protection needs are met.
- Do not deport minor applicants whose requests for asylum have been rejected in final instance. Continue to provide state protection until he or she turns 18.

Guardianship

- Apply domestic guardianship law to SMRs.
- Appoint individual, permanent legal guardians to all SMRs.
- Allocate funds to appoint sufficient numbers of qualified guardians with expertise in the educational, medical and mental health needs of SMRs and an understanding of intercultural communication.
- Fund guardians to effectively carry out their obligations to the minors in their charge.
- Provide sufficient numbers of qualified, trained interpreters to facilitate SMRs’ guardianship.

Legal Representation

- Promptly provide legal representatives to SMRs intercepted for irregular presence in Turkey. A minor’s declared age should be the basis for the initial appointment of a legal representative.
- Provide SMRs legal representation throughout asylum procedures and in connection with all other legal matters.
- Ensure that SMRs’ legal representatives have expertise in asylum law and are trained to provide child-friendly, culturally-appropriate legal advice.
- Provide sufficient numbers of qualified and trained interpreters to facilitate SMRs’ legal representation.

- Allow duly authorized legal representatives full access to all evidence used to adjudicate the asylum applications filed by SMRs.
- Remove all arbitrary restrictions on the participation of legal representatives during SMRs asylum status interviews.
- Provide specific guidance to notaries to issue “power of attorney” authorizations to SMRs without identity documents. Encourage notaries to rely on legally stipulated alternatives to official identification documentation, including the testimony of witnesses.

Residence Permits

- Issue residence permits in a timely manner to all SMRs legally registered as asylum applicants.
- Issue residence permits to SMRs free of charge, pursuant to domestic law. Exempt SMRs from paying the applicable “residence tax” and ensure the related “document fee” cost is either waived entirely or covered by provincial Social Assistance and Solidarity Foundations or SHÇEK funds.
- Promptly assign SMRs identification numbers compatible with the state service system.

4.2 To the UN High Commissioner for Refugees

- Continue to provide SMRs the benefit of the doubt with regard to their age, even if assessed by national authorities to be 18 or over.
- Train UNHCR gate personnel to identify SMRs and treat them in a child-friendly, culturally-appropriate manner. Ensure that no minors are turned away and/or asked to approach at a later time.
- Carry out registration and status determination interviews and issue decisions without delay and on a priority basis. Inform SMRs of processing delays and provide a general timeframe for delayed decisions to be issued.
- Continue to process SMRs’ asylum claims in an age-appropriate manner by specially trained interviewers and interpreters.
- Provide SMRs sufficient time to prepare for status determination interviews.
- Provide detailed information on resettlement prospects and timeframes to SMRs in an age-appropriate manner.
- Seek support from UNHCR headquarters to increase the allocation of staff and interpreters to SMR cases.
- Continue to pursue efforts and allocate funds to provide SMRs transition assistance when they “age out” of state care, in cooperation with state agencies, children’s rights and refugee rights NGOs.
- Continue to encourage the Government of Turkey to comply with its international and domestic legal obligations to SMRs.

4.3 To the Governments of Resettlement and Donor Countries

- Work with UNHCR, local children’s rights and refugee rights NGOs to lobby national authorities to ensure that separated minors refugees’ basic protection and reception rights are upheld in Turkey.
- Consider resettling SMRs before they turn 18 in light of the significant protection gaps faced by SMRs in Turkey. In the alternative, work with UNHCR and national authorities to ensure that

SMRs can be immediately resettled upon turning 18.

- Actively encourage MOI to exempt SMRs from residence permit fees and fines to facilitate their exit from Turkey.

Appendix: Tables

Table 1: Separated Minors²⁵⁹ Registered with UNHCR Turkey, 2004-2009

Nationality	Registration Year						Total
	2004	2005	2006	2007	2008	2009	
Afghanistan	2	17	18	89	71	112	309
D.R. Congo			1	4	3	7	15
Eritrea	1	2		3	4	5	15
Ethiopia	2	1	3		3	3	12
Guinea				2		24	26
Iran	27	26	34	15	24	21	147
Iraq	7	7	2	12	25	12	65
Somalia	67	40	96	258	149	60	670
Sudan	5			4	36	13	58
Others ²⁶⁰	5	2	3	4	2	28	29
Total	116	95	157	391	317	285	1361

Table 2: Separated Minors with Active Files at UNHCR, end of 2009

Nationality	Asylum Seekers	Recognized Refugees	Total
Afghanistan	79	18	97
Guinea	14		14
Iran	15	3	18
Iraq	2	8	10
Somalia	26	22	48
Sudan	9	4	13
Others ²⁶¹	23	2	25
Total	168	57	225

²⁵⁹ UNHCR includes in these statistics minors who are both totally unaccompanied and those who are in the care of an adult with no customary or legal responsibility for them. This report defines the entire group as separated minors.

²⁶⁰ Other countries of origin include: Burundi, Cameroon, Ivory Coast, Ghana, Guinea-Bissau, India, Liberia, Mali, Mauritania, Myanmar, Nigeria, Pakistan, Palestine, Sierra Leone, Sri Lanka and Syria.

²⁶¹ Other countries of origin include: Cameroon, Democratic Republic of Congo, Eritrea, Ethiopia, Guinea-Bissau, Liberia, Mali, Myanmar, Nigeria and Sierra Leone.

Table 3: UNHCR Decisions on the Refugee Claims of Separated Minors, 2004-2009

Nationality	2004			2005			2006			2007			2008			2009			Grand Total
	Recognize	Rejected	Total	Recognize	Rejected	Total	Recognize	Rejected	Total	Recognize	Rejected	Total	Recognize	Rejected	Total	Recognize	Rejected	Total	
Afghanista		4	4	4	12	16	6	9	15	33	3	36	15	5	20	16	7	23	114
Ethiopia		15	15					1	1		3	3							19
Guinea										1		1					9	9	10
Iran	14	24	38	16	17	33	38	5	43	16	6	22	10	6	16	13	4	17	169
Iraq	1		1				1		1	9		9	21		21	14	1	15	47
Somalia	26	22	48	12	12	24	11	53	64	97	42	139	63	9	72	31	7	38	385
Sudan	4	14	18		2	2					3	3	8	2	10	6		6	39
Others ²⁶²		9	9	1	2	3				3	2	5	5	1	6		2	2	25
Total	45	88	133	33	45	78	56	68	124	159	59	218	122	23	145	80	30	110	808

Table 4: Separated Minors According to Institutional Care Status, 2004-2009

	Nationality	2004	2005	2006	2007	2008	2009	Total
In Institutional Care	Afghanistan		2	8	29	18	55	112
	DR Congo			1	3	3	5	12
	Guinea				1		19	20
	Iran	3	4	3		2	3	15
	Somalia	2	6	14	9	29	14	74
	Sudan					28	7	35
	Others ²⁶³²⁶⁴	3		2	4	7	15	31
In Care Total		8	12	28	46	87	118	299
Not In Institutional Care²⁶⁴	Afghanistan	2	15	10	60	53	57	197
	Eritrea	1	2		2	2	3	10
	Iran	24	22	31	15	22	18	132
	Iraq	4	7	2	10	21	12	56
	Somalia	65	34	82	249	120	46	596
	Sudan	5			4	8	6	23
	Others ²⁶⁵	7	3	4	5	4	25	48
Out of Care Total		108	83	129	345	230	167	1062
Grand Total		116	95	157	391	317	285	1361

²⁶² Other countries of origin include: Burundi, Democratic Republic of Congo, Eritrea, India, Liberia, Nigeria, Palestine, Sierra Leone, Sri Lanka and Syria.

²⁶³ Other countries of origin include: Ivory Coast, Eritrea, Ethiopia, Iraq, Liberia, Mali, Myanmar, Nigeria and Sierra Leone

²⁶⁴ These minors are not in institutional care because they have been designated by MOI to be 18 or over. UNHCR, however, continues to categorize them as minors and processes them as such.

²⁶⁵ Other countries of origin include: Burundi, Cameroon, Ivory Coast, Ethiopia, Ghana, Guinea-Bissau, Guinea, India, Liberia, Mauritania, Nigeria, Pakistan, Palestine, Sierra Leone, Sri Lanka and Syria.

