



HELSINKI  
YURTTAŞLAR  
DERNEĐİ

Refugee Advocacy & Support Program

*Unwelcome Guests:*  
The Detention of Refugees  
in Turkey's  
“Foreigners’ Guesthouses”

November 2007

## ADDENDUM TO THE REPORT

HCA submitted this report to the Ministry of Interior (MOI) for its comments prior to the report's publication. The draft was provided to MOI on January 18, 2008, and MOI provided an "unofficial" response on March 11, 2008, by e-mail. In essence, MOI's comments are that:

(1) *the report is based on information provided by "illegal migrants" not "refugees"* ("It would not be right to reach conclusions on illegal migrants via standards set for refugees. The report... does not distinguish between refugee/asylum seeker, illegal migrant and foreigners who acquire illegal status.")

(2) *the statements provided by interviewees lack credibility since they are anonymous and therefore cannot be investigated by authorities to determine their accuracy* ("...these allegations lack credibility and are unsubstantiated because they were made anonymously and were not subject to judicial or administrative procedures.")

(3) *the report states that there are no "refugee guesthouses," but there is one in Yozgat* ("...the statement that there are no 'refugee guesthouses' in Turkey, and the failure to bring up the Yozgat Refugee Guesthouse, shows that the research is incomplete.")

**The refugee definition applies to all people seeking asylum.** The references in the report to "refugees" is consistent with international norms, and includes all people who intend to apply, have applied or have been granted "refugee status" by either the United Nations High Commissioner for Refugees (UNHCR) or MOI. MOI, however, refers to those interviewed for the report as "illegal migrants." Many refugees, however, including those interviewed, are forced to enter countries illegally because they are unable - due to persecution or the lack of a central government - to secure the necessary travel documents from their countries of origin. The term "illegal migrant" is often applied to anyone entering another country without documentation, but to apply it to refugees does not accurately reflect the fact that they are fleeing persecution and require international protection. It is also worth clarifying the legal terminology used relating to refugees' legal status in Turkey. Since Turkey applies a geographical limitation to the 1951 Refugee Convention, it does not accept non-European refugees. "Temporary asylum applicants" are those non-Europeans who have applied to the MOI to be granted the temporary right to stay in Turkey while their refugee claims are processed by the UNHCR. An "asylum seeker" is a non-European or stateless person whose application for temporary asylum has been accepted by the MOI.

**Detention standards apply to all detainees in Turkey regardless of legal status.** The report discusses international standards on detention, which apply to all detainees, not just refugees. Thus, even if MOI seeks to define all detainees in foreigners' guesthouses as "illegal migrants," Turkey is still obligated to ensure that these detainees are not deprived of their liberty arbitrarily and that all conditions comply with international detention standards.

**The statements of interviewees are credible.** Human rights organizations regularly provide anonymous quotes in reports exposing human rights violations. This report is no different than those published by Refugees International, Human Rights Watch or Amnesty International, in this regard. Anonymous quotations are used in this report to illustrate the conditions discussed and are regularly preceded by terms such as “allegedly” or “reportedly.” They also are accompanied by relevant dates and locations. We welcome any investigation of the reported incidents; in fact, we submitted the report to MOI ahead of publication in order to facilitate just such an investigation.

**The facility at Yozgat houses temporary asylum applicants with “protection” concerns on a voluntary basis.** Whether Yozgat - which houses less than 200 people - is a “refugee guesthouse” is not relevant to this report. The facility was not examined since its residents enter voluntarily, as opposed to the many other refugees (as defined above) who are detained against their will in “foreigners’ guesthouses” across the country.

## **HELSINKI CITIZENS' ASSEMBLY – TURKEY REFUGEE ADVOCACY AND SUPPORT PROGRAM**

Based in Istanbul, the Helsinki Citizens' Assembly - Turkey (hCa) is an autonomous, non-governmental organization working to advance fundamental rights and freedoms, peace, democracy and pluralism. Founded in 1988, hCa is associated with a network of other “Helsinki” organizations throughout Europe. hCa has advocated for the rights of refugees for more than seven years, and in 2004 established the Refugee Legal Aid Program (RLAP). RLAP was founded by a group of lawyers and human rights advocates to provide legal assistance to the many people who arrive each year in Turkey seeking refugee status. Starting in Fall 2006, hCa expanded its work in the area of refugee advocacy, establishing the Refugee Advocacy and Support Program (RASP).

RASP is the only civic initiative in Turkey involved not only in direct legal and psychosocial services for refugees but also advocacy efforts aimed at developing the capacity of local NGOs and ensuring that domestic law and policy uphold refugees' basic human rights. The overall goals of the program are to:

- (1) provide legal and psychosocial services to refugees in ways that will empower them to advocate for their own rights;
- (2) raise awareness and sensitivity in society about the situation 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.

RASP is involved in the following areas of activity:

- Providing comprehensive, free **legal advice** to refugees (including those in detention) regarding the United Nations High Commissioner for Refugees (UNHCR) refugee status determination (RSD) process and Turkish administrative requirements;
- Providing refugees suffering from the psychological effects of torture and trauma with **psychological counseling and rehabilitation**, through individual and family therapy, prescription and monitoring of medication and medical treatment;
- Providing a range of **trainings and public education tools for refugee communities**, including community public legal education sessions, interpreter trainings, and information brochures available in refugee languages;
- Supporting the **coordination and expansion of services to refugees** provided by NGOs and professionals in Turkey, through coordination meetings and trainings for NGOs and professionals, including intensive 3-day workshops for NGOs, refugees and government agencies in “satellite cities” in Turkey (where refugees reside while their claims are pending);
- **Monitoring and reporting on Turkish state practice** regarding the “temporary asylum” procedure, the living conditions of refugees in satellite cities, and access to the asylum procedure by those in detention and airport transit zones;
- **Monitoring and reporting on UNHCR Ankara's RSD practices** and evaluating its compliance with UNHCR's own legal guidelines and procedural standards;

- **Lobbying state officials and agencies** to adopt and implement legislation and practices upholding the highest international standards relating to the protection of refugees;
- **Raising awareness about the conditions of refugees in Turkey** through outreach to national and international media, press releases and campaigns on critical refugee issues, the publication of *Refugee Voices* – a quarterly newsletter written by refugees, field research and conference presentations.

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## **EXECUTIVE SUMMARY**

### ***1 Introduction***

As European countries bordering the Mediterranean have introduced increasingly harsh measures to stem the flow of irregular migration across their frontiers, Turkey has become the main crossroads for flows of migration from Africa, Asia and the Middle East into Europe. At the same time, as part of Turkey's accession process, the European Union has stepped up pressure on Turkey to prevent the movement of migrants, asylum seekers and refugees into Europe. As a result of Turkey's efforts to limit irregular migration flows, thousands of foreign nationals without travel documents, refugees among them, are detained while attempting to either enter or exit the country illegally. They are primarily held in detention centers, which are officially referred to as "foreigners' guesthouses."

Until now, no report has been published regarding the conditions faced by detained refugees in Turkey. This, in part, is due to the fact that Turkey's Ministry of Interior (MOI) has prevented international and domestic NGOs from entering guesthouses, whether for the purpose of carrying out monitoring activities or providing assistance to detainees. As Turkey continues its efforts to stem the flow of irregular migration, it is critical that its practices regarding the detention of foreign nationals, and in particular, refugees, are transparent, and comply with international standards.

Of all the foreign nationals detained in Turkey, a certain critical proportion are refugees – that is, as defined in this report, anyone who intends to apply, has applied for, or has been granted "refugee status" by a decision-making body, which in Turkey, is either the UNHCR or MOI. Most refugees who are detained are initially criminally charged for either illegal entry or exit from the country, or failure to comply with requirements of the "temporary asylum" system. However, for the majority of their time in detention, refugees are typically held for administrative purposes, including to have an asylum application reviewed or to be processed for deportation.

Through interviews carried out from October 2006 to September 2007 with 40 refugees from 17 countries, and supplementary information gathered from phone calls received from detainees, this report examines refugees' access to procedural rights in detention, as well as conditions in guesthouses. In particular, the report is an attempt to identify gaps between reported practice and standards of treatment set forth in both domestic regulations and international guidelines on detention. The report is broken down into two main areas: procedural rights in detention, and conditions of detention. Chapter 1 details relevant law and standards and Chapter 2 outlines findings in these two areas.

A number of key international guidelines have been particularly useful in identifying refugees' baseline rights in detention. These include the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers; recommendations of the UN Working Group on Arbitrary Detention; the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment; and the UN Standard Minimum Rules for the Treatment of Prisoners.

While there is a dearth of domestic legislation on the rights of refugees in detention, certain regulations provide guidance in analyzing whether current conditions live up to domestic requirements. These include the 1994 Asylum Regulation and its 2006 Amendments; the 2006 Circular; and the 1983 Refugee Guesthouse Directive.



## *2 Summary of Findings*

The interviewees reported a range of limitations with regard to their ability to access their **procedural rights** in detention. In particular:

- Refugees reported being detained for the duration of the temporary asylum process, rather than being transferred to a “satellite city” upon notifying police of the intention to apply for asylum.
- Detained refugees face barriers to applying for asylum, including:
  - a lack of information about asylum procedures; and
  - refusal by police to take asylum applications.
- Those held in airport transit zones are barred from applying for asylum altogether.
- Inability to access asylum procedures has led to instances of illegal deportation, or *refoulement*.
- None of the interviewees were informed of the reasons for their arrest or their rights in detention.
- Many faced indifference or aggression from the police when they asked for this information.
- No interviewees were given information about the expected length of their detention, leading to feelings of hopelessness and depression.
- Refugees have no practical recourse to judicial review to challenge the legality or the length of their detention.
- Detained refugees have only very sporadic access to lawyers and are not able to receive visits from other NGOs or advocates at all.
- Refugees held in transit zones in Turkey’s airports have no access at all to lawyers, the UNHCR or other agencies or advocates.
- Those who apply for asylum while in detention tend to be detained for longer periods (usually more than six months) than those who have applied beforehand (averaging one to three months).

The interviewees also reported significant deficiencies regarding **conditions** in detention. In particular:

- Adults and minors, as well as convicted criminals and non-criminals, are regularly housed in the same areas. Only men and women are segregated.
- Overcrowding is common, often leading detainees to sleep on the floor with inadequate bedding.
- Facilities have windows, but are cold in winter and hot in summer.
- Overcrowding exacerbates poor ventilation, especially where smoking is permitted.
- Bathrooms and sleeping areas tend to be dirty and insect-infested.
- While most guesthouses contain showers, hot water is not always available.
- Detainees regularly have to pay for their own toiletries and towels at inflated prices. Some must buy cleaning supplies to clean living areas.
- Meals are lacking in nutritional and caloric value. Some facilities do not serve food on the weekend.
- Safe drinking water is not freely available.

- Detainees, who can afford to do so, are forced to get food delivered—at highly inflated prices—from local shopkeepers.
- Generally, no exercise or recreation is available to detainees.
- Books are unavailable.
- Medical services in guesthouses are universally inadequate.
- Barriers to receiving medical and mental health treatment include:
  - the outright denial of services by police;
  - the high cost of treatment and medication; and
  - a lack of available interpreters.
- Outside communication is limited due to:
  - the high cost of using public telephones;
  - the inability to receive calls;
  - a lack of privacy; and
  - minimal access to visitors.
- Detainees universally witness or are subject to varying degrees of verbal and physical abuse by police officers.
- Interviewees generally reported that police officers are indifferent to refugees, and at worst, they engage in unjustified physical violence, including beating and slapping.
- The most serious allegations of police mistreatment include *falaqa*—beating the soles of the feet—and being forced to stand naked in front of other detainees and officers.
- Unaccompanied minors are regularly detained in adult guesthouses until their age has been confirmed and they can be sent to detention facilities for minors.
- Age determination procedures do not account for margins of error, or the psychological maturity of the applicant, and do not provide the minor the benefit of the doubt regarding his or her age.
- Children of refugees are regularly separated from opposite sex parents or guardians.

### ***3 Recommendations***

Based on the foregoing findings, examined in the context of both domestic and international standards regarding the detention of refugees, we make the following recommendations:

#### **General Recommendations**

##### ***Ratify optional protocol to the Convention Against Torture***

The Turkish government should ratify the Optional Protocol to the UN Convention Against Torture (OPCAT), which provides for the establishment of independent, national preventative mechanisms. These mechanisms have the authority to visit places where people are deprived of their liberty, to ensure that no torture and inhuman or degrading treatment take place. The ratification of OPCAT will enable regular visits to be undertaken by independent international and national bodies to foreigners' guesthouses, custodial facilities in local police stations, transit zones in airports and other places where refugees are detained.

##### ***Establish monitoring and reporting bodies***

City Human Rights Councils should establish committees with the power of visiting places where people are deprived of their liberty, including guesthouses, custodial facilities in local police

stations, transit zones in airports and other places where refugees are detained. These committees should be able to regularly examine the treatment of detainees and make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detainees and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### *Train and maintain specialized staff*

MOI should continue and intensify its training of police officers and other staff assigned to the Foreigners' Branch on the rights of refugees under international standards and domestic law. A specialized branch working only on asylum procedures and with refugees should be established in order to prevent experienced staff from being rotated to another department every few years, which is the current practice.

### **Procedural Rights**

#### *Detention of refugees*

Refugees should not be detained unless it is unavoidable. Asylum applications should be processed without unnecessarily curtailing refugees' freedom of movement. Where detention is unavoidable, refugees should be informed of and accorded all procedural rights, and conditions of detention should comply with domestic and international standards. A refugee's presence without documentation, including at entry and exit points, should not prejudice his or her credibility during the asylum application procedure.

#### *Right to access asylum procedures*

Providing foreign nationals with information about domestic asylum procedures is essential in allowing people to exercise their rights. Detained foreign nationals should immediately be provided with information, in a language they understand, regarding how to apply for asylum. All applications for asylum, whether oral or written, should be taken immediately. Trained, experienced interpreters should be available to assist in this regard. Police at guesthouses, police stations and other detention facilities should be trained on the asylum procedure and informed of their obligation to accept and process the applications of detainees. Foreign nationals detained in airport transit zones should not be prohibited from applying for asylum and should be accorded the same rights as other foreign nationals in Turkey applying for asylum.

#### *Communication of reasons for and length of detention*

Upon arrest, authorities should immediately inform arrestees of the reasons for and expected length of detention in a language they understand. Trained, experienced interpreters should be available and utilized whenever necessary to communicate the reasons for and expected length of detention.

#### *Right to judicial review*

A system of judicial review should be established allowing refugees to challenge the reasons for and length of detention, and allow them to be released if the detention is found unlawful. Refugees should be provided with free legal aid to carry out judicial review. Authorities should provide refugees with the reasons for detention, as well as regularly provide them with information about the status of their asylum claims in order to allow them to determine if the procedures are being carried out with due diligence.

#### *Right to legal counsel*

Authorities should inform guesthouse detainees, as well as those in police stations and in airport transit zones wishing to seek asylum, of their right to retain legal counsel, and communicate with

other agencies and advocates. Authorities should universally allow legal counsel and advocates access to guesthouses, police stations and airport transit zones to meet clients, and provide sufficient privacy and time for meetings.

### *Length of detention*

If the detention of a refugee proves to be unavoidable, his or her length of time in detention should be as limited as possible. All procedures, including asylum applications, should be processed with due diligence. Detainees wishing to seek asylum for the first time while in detention should not be automatically detained for the duration of their asylum applications.

## **Detention Conditions**

### *Segregation*

Detainees should be segregated not only by gender, but also by taking into account age, criminal record, the legal reason for detention, and any special needs. In particular, refugees should not be held together with those accused of or convicted of crimes. Unaccompanied minors should not be held in the same facilities as adults. Refugee children should not be separated from opposite sex parents or guardians. Sick or disabled detainees should be held in separate areas.

### *Sleeping accommodation and bedding*

Authorities should allocate necessary resources to ensure the availability of sufficient numbers of beds and clean bedding for every detainee. Where sufficient floor space to accommodate all detainees is unavailable, excess numbers of detainees should be housed in other rooms or facilities. Sleeping areas should be regularly cleaned and exterminated by facility cleaning staff.

### *Light and ventilation*

Detention facilities should provide sufficient levels of ventilation. Overcrowding should be avoided. Excess numbers of detainees should be housed in other rooms or facilities.

### *Hygiene and sanitation*

Detention facilities, including kitchens, bathrooms and showers, should be regularly cleaned and maintained to ensure appropriate standards of hygiene and cleanliness. Hot water should be regularly available. Detainees should be provided with toilet articles for free. Water for cleaning should be regularly available. Laundry facilities and free detergent should be provided and accessible.

### *Nutrition*

Detainees should be provided with unlimited, free drinking water. Meals should be provided three times per day, and should be served in sufficient amounts and with sufficient nutritional value. Food delivered by local shops should be sold at the same price as that sold outside the detention facility.

### *Recreation*

Detainees should have access to the outside and/or exercise at least one hour each day. Recreational equipment and books should be made available.

### *Medical services*

Doctors and mental health professionals, along with trained, experienced interpreters, should make regular rounds in detention facilities. Diagnosis, treatment and medication should be provided for free. Detainees with serious health problems should be immediately diagnosed and

checked into a hospital. Police and other facility staff should be trained to identify detainees in need of medical attention.

***Contact with the outside world***

Detainees should be allowed to receive visits from lawyers, advocates, NGO representatives, consular representatives and family. Sufficient time and privacy should be provided to detainees and their visitors. Detainees should be able to make calls for free to legal representatives or advocates.

***Treatment by staff***

Better communication between staff and detainees should be facilitated through the use of trained, experienced interpreters in relevant languages. Force should never be used with detainees, unless for prescribed reasons, such as self-defense. An appropriate complaint mechanism should be established regarding treatment by staff. All detainees should be informed of the procedure upon their admittance into the facility.

***Protection of minors***

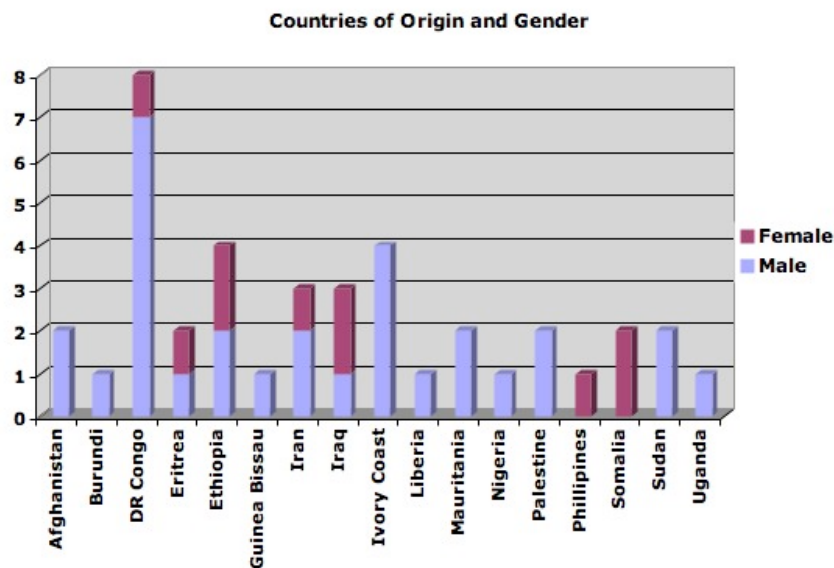
Unaccompanied minors should not be detained. Where no other option is available, detention should be for the shortest period possible. In administering age determination procedures, MOI should apply a margin of error, should assess the psychological maturity of the minor and should extend the minor the benefit of the doubt regarding his or her age. Asylum applicants should not be held with adults while awaiting the results of age determination tests. The asylum applications of minors should be processed in an expedited manner. Special care should be extended to unaccompanied minor asylum seekers. Specially trained staff should facilitate minors' asylum application.

## METHODOLOGY

In the absence of other research regarding the detention of refugees in Turkey, RASP conducted its own interviews with 40 refugees from 17 countries who had been or were in detention. The interviewees are not representative demographically of the population of refugees and asylum seekers in Turkey. They were either a part of the asylum procedure or stated their intentions to apply for asylum while in detention. The report uses the data from these interviews, as well as information received from detainees during the course of telephone counselling sessions with RASP legal advisors.

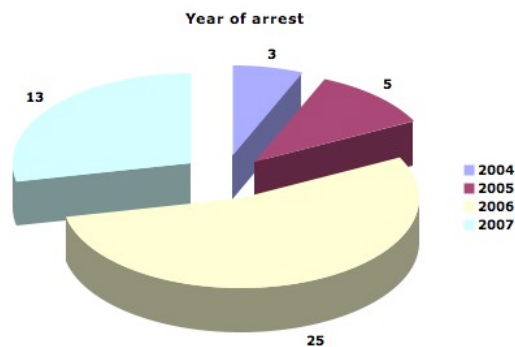
Interviewees were provided with the same questionnaire relating to the conditions of their arrest and detention.<sup>1</sup> The questionnaire is divided into 10 subsections: basic information, physical conditions in detention, information provided in detention, interactions with the police, healthcare, visits, differential treatment of detainees, asylum applications and social relations among detainees. These categories of analysis reflect minimum standards of protection for refugees in detention set out both in the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and the 2003 European Council Directive laying down minimum standards for the reception of asylum seekers. In this way, the information collected by the questionnaires facilitates an analysis of the degree to which the Turkish authorities are complying with international standards on detention practices.

Interviewees came from diverse countries and were primarily male.

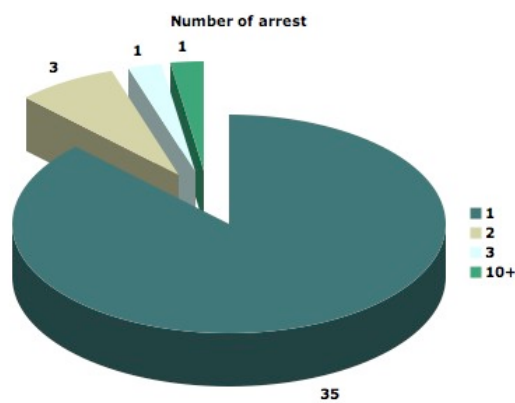


<sup>1</sup> See sample questionnaire at Appendix 1.

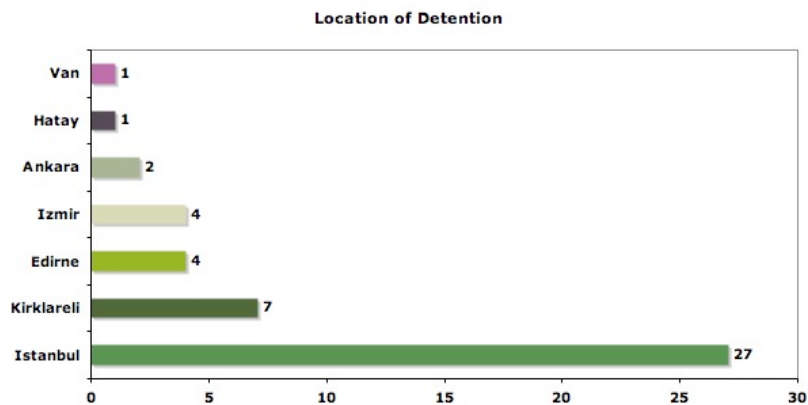
Interviewees provided information about each time they were detained (with the exception of one man who gave information only about two of his ten arrests). In total, 46 instances of detention were recorded, since five of the detainees were arrested more than once.



The questionnaires were filled out in 2006 and 2007 and cover incidences of detention that go back to the year 2004.



In total, guesthouses and other detention facilities in seven cities were surveyed.



The largest number of interviewees was held in Istanbul. This bias is largely based on the fact that RASP is located in Istanbul. Interviewees provided information about all three of the Istanbul guesthouses. The guesthouse located in Istanbul Security Directorate buildings on Vatan Avenue was open until the spring of 2006, when the guesthouse was moved to the Zeytinburnu Security Directorate. In March 2007, a new guesthouse was opened in the Kumkapı district of Istanbul. In addition to facilities in Istanbul, the report also surveys guesthouses in Izmir, Ankara, Van, Hatay, both guesthouses in Edirne (the Tunca Camp and the guesthouse in the center of the city) and the Kırklareli Guesthouse. Interviewees also provided information about detention facilities other than guesthouses, such as police stations in Istanbul, gendarmerie posts in Izmir and Van, minors detention facilities in Istanbul as well as the transit zone in the Istanbul Ataturk Airport.

The interviews were conducted in consideration of the ethics of interviewing vulnerable individuals. The interviewees were guaranteed full anonymity. Any information that would render individual interviewees identifiable has been removed from the report. Every effort was made to ensure that the interviews were conducted in a manner that did not cause the interviewees additional stress. Interviewees were also compensated for travel costs.



## LEGAL CONTEXT FOR THE PROTECTION OF REFUGEES IN TURKEY

Although one of the original signatories to the 1951 Refugee Convention and the 1967 Protocol, Turkey adopted the 1951 Convention Relating to the Status of Refugees (1951 Convention) with the so-called “geographical limitation” clause.<sup>2</sup> That clause provided State Parties the option of restricting their 1951 protection obligations to individuals who became refugees “as a result of events occurring in Europe.” To date, Turkey remains one of the few State Parties to the 1951 Convention to retain the geographical limitation and considers itself bound by its 1951 obligations only with respect to nationals of so-called “European countries of origin.”<sup>3</sup>

Notwithstanding this legal limitation, in reality, the current profile of people seeking international protection in Turkey almost exclusively consists of individuals originating from “non-European” countries – most significantly Iraq, Iran, Afghanistan, Somalia, Eritrea and other African states in increasing numbers.<sup>4</sup> For these non-Europeans, Turkey assumes a limited responsibility, offering the prospect of what is termed “temporary asylum.” Turkey’s temporary asylum regime for non-European refugee applicants involves parallel procedures, one administered by the Turkish Ministry of Interior (MOI) and the other by UNHCR Branch Office Ankara (which operates under a Memorandum of Understanding with the Turkish government).

Non-European refugee claimants in Turkey are required to file two separate applications, one with the UNHCR and one with the MOI. The UNHCR conducts refugee status determination (RSD) to adjudicate individual refugee claims. Those who are found to meet the definition of a refugee as defined by the 1951 Convention are “recognized” as such and subsequently resettled in a third country. The main resettlement countries for Turkey are the USA, Canada and Australia.

Alongside the UNHCR procedure, refugee claimants are required to file a separate “temporary asylum” application with the Turkish government. The purpose of the government procedure is to determine – independently from the UNHCR assessment – whether the applicant has a legitimate need for temporary asylum in Turkey as specified by Turkey’s national legislation. The government department in charge of administering Turkey’s temporary asylum regime is the Foreigners’ Borders and Asylum Division of the General Directorate of Security under the MOI. Turkey understands temporary asylum for non-Europeans as a unilateral commitment that does not directly flow from its core obligations under the 1951 Convention beyond a general undertaking to “cooperate with UNHCR... in the exercise of its functions.”<sup>5</sup>

The backbone of Turkey’s asylum legislation, the 1994 Asylum Regulation, was enacted in November 1994 and subsequently amended in 1999 and 2006. It essentially replicates the refugee definition set forth in the 1951 Convention in establishing who can benefit from temporary asylum protection.<sup>6</sup> However it allows significant room for administrative discretion

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<sup>2</sup> United Nations General Assembly, *Convention Relating to the Status of Refugees* (1951 Convention), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 37, Article 1b(1). Online. UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b01b964>.

<sup>3</sup> Turkey interprets the term “European” to include nationals of Council of Europe member states.

<sup>4</sup> According to UNHCR Branch Office Ankara figures, as of 31 August 2007, there were 10,942 refugees and asylum seekers registered with UNHCR in Turkey, 4,842 of whom were new applicants who approached UNHCR during the first eight months of 2007. The leading four countries of origin were Iraq (42%), Iran (36%), Somalia (10%) and Afghanistan (7%).

<sup>5</sup> UN, *Convention Relating to the Status of Refugees*, Article 35.

<sup>6</sup> *Regulation on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country*, 1994, Article 3.

in the processing of applications for temporary asylum. It was not until June 2006 that the Turkish government formally defined the procedure in a circular (2006 Circular) outlining the specific rights, benefits and obligations of temporary asylum applicants. Other legislation that inform the asylum procedure are the Passport Law (No. 5683), the Law on Sojourn and Movement of Aliens (No. 5687), the Law on Settlement (No. 2050) and the Citizenship Law (No. 5682).

The main feature of Turkey's temporary asylum system is a policy of dispersal. Under MOI and UNHCR coordination, temporary asylum claimants are referred to one of 28 so-called "satellite cities" – the term informally used to describe the provinces designated by the MOI where asylum seekers are required to reside.<sup>7</sup> These satellite cities are mostly located in interior regions of the country. Refugee applicants are required to pursue their temporary asylum applications with the "Foreigners' Police" in the province to which they are assigned and must reside there until the final determination on their applications are made. According to the 1994 Regulation, asylum seekers who arrived in Turkey legally must register with the police in the city where they currently reside, while those who entered illegally must register in the province they first entered in Turkey.

There is no specific time limit to register, but refugee applicants are expected to approach the authorities "without delay." Those who fail to apply "within the shortest time span possible" are obliged to explain their reasons for the delay and must cooperate with competent authorities.<sup>8</sup> The 2006 Circular however expressly stipulates that even where an applicant "failed to apply within a reasonable time period" and "cannot provide any reasonable excuse," asylum authorities are required to accept their applications "without prejudice."<sup>9</sup>

Typically, refugee applicants first approach the UNHCR. Following their registration, they are informed by the UNHCR of the province to which they must report in order to file their "temporary asylum" application with the Turkish government. Refugee applicants generally have no input on the province to which they will be assigned, but they may be assigned to live in a province where family members reside. Once registered as "temporary asylum applicants," they are required to regularly report to local police to document their continued residence in the city. Refugee applicants may apply to local police authorities to receive written permission to temporarily leave their assigned province. Leaving one's assigned city without permission may result in criminal charges.

Refugee applicants must pay a "residence" fee for each family member every six months, which is often prohibitively high. Once this is paid, a residence permit is issued, which usually is a prerequisite to the receipt of medical care and education. Refugee applicants are almost always required to cover the cost of their accommodation and health care. Although refugee applicants have been granted a nominal right to employment, this right is rarely exercised due to legal barriers associated with receiving work permits, language barriers and strains on the labour market.

UNHCR offers very modest financial assistance to "recognized" refugees and "one-time special" assistance to vulnerable refugee applicants in emergency situations. Under the 2006 Circular regime, the Turkish government does not undertake any commitment to assist refugee applicants

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<sup>7</sup> The number of these cities is in flux.

<sup>8</sup> *Regulation on the Procedures and the Principles Related to Mass Influx and Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum from a Third Country*, 1994, Article 4.

<sup>9</sup> See 2006 Circular, Section 2, on Duties of Application Authorities.

in need of shelter, healthcare and subsistence assistance other than a non-binding reference to the role of Social Solidarity and Assistance Foundations organized under provincial governorates. These government agencies are mandated to attend to the social assistance needs "all residents of the province" including, by definition, refugees.<sup>10</sup> In practice, however, the support provided by these agencies to refugees in satellite cities is far from adequate.

The direction of Turkish asylum policy is largely influenced by Turkey's agenda for EU accession. Turkey is expected to adopt the EU *acquis* in the area of asylum and migration in accordance with the Accession Partnership Strategy of March 2003 and the National Program for the Adoption of the EU *Acquis* of July 2004. In January 2005, the Turkish government adopted a "National Action Plan for Asylum and Migration" (NAP) and pledged to undertake a series of measures to align asylum policy and practice with EU standards, including administrative and technical capacity development, training of specialized staff and changes in legislation. On the critical issue of lifting the "geographical limitation," the NAP stipulates that "a proposal for lifting the geographical limitation may be expected to be submitted to the Parliament in 2012 in line with the completion of Turkey's negotiations for accession," and on the condition that necessary changes in legislation and infrastructure have been completed to "prevent the direct influx of refugees to Turkey during the accession phase" and "EU Member States' demonstrated sensitivity in burden sharing."<sup>11</sup>

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<sup>10</sup> See 2006 Circular, Section 19 on Facilities to be Provided for Asylum Applicants and Beneficiaries.

<sup>11</sup> See *Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration* (NAP), Section 4.13 on Lifting of the Geographical Limitation.

## **CHAPTER 1 : LEGAL FRAMEWORK FOR THE DETENTION OF REFUGEES IN TURKEY**

### *1 What is a "Foreigners' Guesthouse"?*

Foreign nationals are detained in Turkey for a variety of reasons, whether as a result of alleged criminal activity, illegal entry or exit from the country, or failure to comply with requirements of the temporary asylum system. After the conclusion of criminal court procedures relating to these charges, foreign nationals are denied their freedom of movement. The justification for their detention is that it is the most effective means of carrying out relevant administrative procedures, such as deportation or assignment and transfer to a satellite city. Foreign nationals are detained without a court order; they are held based only on an administrative ruling from the Ministry of Interior. Detainees are never informed and are rarely aware that they are no longer being held pursuant to a judicial process but according to administrative regulations. This is exacerbated by the fact that they generally are in contact with the same police personnel during their stay in detention.

Most detainees are held in "foreigners' guesthouses," though a minority are detained in police stations and airport transit zones. Despite the name, these "guesthouses" are effectively detention centers in which detainees are held involuntarily. Detention facilities have been defined as "custodial settings ranging from holding facilities at points of entry, to police stations, prisons and specialized detention centers."<sup>12</sup> Although guesthouses in Turkey are not officially referred to as "detention facilities," they clearly fall within this definition.

A proportion of foreign nationals detained in guesthouses are refugees. In the refugee context, UNHCR has defined detention as "confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where the only opportunity to leave this limited area is to leave the territory."<sup>13</sup> Refugees, like other foreign nationals detained in guesthouses, are not allowed to leave freely, and as such, are under detention. Guesthouses should be distinguished from "accommodation centers," which are locations used only "for collective housing of applicants for asylum and their accompanying family members."<sup>14</sup>

In Turkey, guesthouses are administered by the Tracing and Control Police Section of the Foreigners' Department of each City Security Directorate. The Tracing and Control Police are responsible for foreign nationals who have entered or attempted to exit Turkey illegally; are found in violation of visa regulations; or have allegedly committed illegal activities.<sup>15</sup>

The rights of detainees, including refugees, are derived from the substantial curtailment of their freedom of movement – regardless of the justification given for the detention (i.e., whether for

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<sup>12</sup> UN High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (UNHCR Detention Guidelines), 26 February 1999, Guideline 1.

<sup>13</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards, Extract from the 7th General Report [CPT/Inf (97) 10], "Substantive" sections of the CPT's General Reports, CPT/Inf/E (2002) 1 - Rev. 2003, English.

<sup>14</sup> EU Commission Proposal for a Council Directive Laying Down Minimum Standards on Reception of Applicants for Asylum in Member States, COM (2001) 181 final.

<sup>15</sup> See e.g., <http://www.iem.gov.tr/iem/?m=1&s=31&idno=91>.

criminal or administrative purposes). Despite this, states commonly abrogate their legal obligations to refugees in detention, who may be confined for indefinite lengths of time in substandard conditions, with limited or no recourse to judicial review.<sup>16</sup> Refugees in Turkey face similar experiences in detention. While there are explicit safeguards for criminal detainees in Turkey, there are few such safeguards for those in administrative detention, and no explicit standards relating to the detention of foreign nationals.<sup>17</sup>

This chapter lays out domestic and international standards relating to the procedural rights of detained foreign nationals, including refugees, and the minimum standards for detention conditions.

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<sup>16</sup> E.g., JRS-EUROPE (2005) *Detention in Europe: Administrative Detention of Asylum Seekers and Irregular Migrants*; FRONTIERS (2006) *Legality vs. Legitimacy: Detention of Refugees and asylum seekers in Lebanon*.

<sup>17</sup> Turkish Constitution, Article 19; See also, UN Working Group on Arbitrary Detention, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," Addendum, Mission to Turkey, A/HRC/4/40/Add.5, 7 February 2007, Paragraphs 86-90.

## *2 Procedural Rights and Practice*

### **2.1 Grounds for the Detention of Refugees**

#### *Domestic Law*

The provisions of Turkish law most relevant to the apprehension and detention of refugees relate to irregular movement. In particular, domestic law provides that foreign nationals in violation of their residence status may be detained, and criminally charged, for the following violations:

- Illegal entry<sup>18</sup>
- Illegal exit<sup>19</sup>
- Leaving the designated city of residence without permission<sup>20</sup>

Refugees, like other foreign nationals, apprehended by police in Turkey with irregular status are generally detained in guesthouses. Upon being detained, they are usually charged with a criminal violation (i.e., for illegal entry or exit and residence violations). However, typically, for the majority of their time in detention, refugees are held for administrative purposes, including: to have their asylum application processed; to be assigned a satellite city; or to be processed for deportation.

#### *International Law and Guidelines*

Liberty is a fundamental human right. Multiple international instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), provide that no one should be arbitrarily deprived of his or her liberty. Refugees, clearly, are also entitled to this right.

However, since many refugees are forced to enter a country illegally to escape persecution, they may find themselves in violation of local law in their country of asylum. As a result, Article 31 of the 1951 Convention Relating to the Status of Refugees (1951 Convention) prohibits the punishment of refugees for illegal entry under if they present themselves to authorities and show good cause for their illegal entry or presence.

International law and standards also specify that, as a rule, refugees should not be detained.<sup>21</sup> If they are, the detention “should not be automatic [or] unduly prolonged”<sup>22</sup> and must only take place for these exceptional reasons:<sup>23</sup>

- to verify identity;
- to determine the elements on which the claim for refugee status or asylum is based;

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<sup>18</sup> Passport Law, Article 34.

<sup>19</sup> Passport Law, Article 34.

<sup>20</sup> The Law on the Sojourn and Movement of Aliens, Article 25.

<sup>21</sup> UNHCR Detention Guidelines; see also, UNHCR Comments on the 2005 Immigration and Nationality Bill, October 2005, London UK (“UNHCR’s view is that the detention of asylum seekers is inherently undesirable, and that there must be a presumption against its use”), available at:

<http://www.unhcr.org/legal/positions/UNHCR%20Comments/Comments2005IANbilldetention.htm>

<sup>22</sup> UNHCR Detention Guidelines, Introduction (Para. 3).

<sup>23</sup> EXCOM Conclusion No. 44 (XXXVII); UNHCR Detention Guidelines, Guideline 3(iii).

- in cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the state in which they intend to claim asylum; or
- to protect national security and public order.

## **2.2 The Right to Access Asylum Procedures**

Consistent with right enshrined in the 1951 Convention, Turkish legislation recognizes the right of foreign nationals who enter Turkey illegally to apply for asylum.<sup>24</sup> The law provides that asylum applications will not be prejudiced so as long as the applicant approaches the police for registration in the shortest time possible after entering the country, and can account for any delay.<sup>25</sup>

The UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (UNHCR Detention Guidelines) specifically state that "detention should not constitute an obstacle to asylum seekers' possibilities to pursue their asylum application."<sup>26</sup>

However, as discussed in Chapter 2, Section 1, foreign nationals detained in guesthouses are often denied the right to apply for asylum in detention, whether because they are not informed of the asylum procedure, have no access to an interpreter, or are prohibited from submitting an asylum application. Of particular concern is the fact that those held in transit zones in Turkish airports are flatly prohibited from applying for asylum.<sup>27</sup>

A troubling outcome of the denial of access to asylum procedures is the risk of *refoulement*—that is, return to the frontiers of territories where one's life or freedom would be threatened on account of one's race, religion, nationality, membership of a particular social group or political opinion.<sup>28</sup> As discussed in Chapter 2, Section 1.4, a number of cases of the forcible return of refugees have been reported to hCa this year. Unless asylum procedures are made universally available to foreign nationals, legitimate refugees will continue to be *refouled* before being able to apply for asylum.

## **2.3 Procedural Safeguards for Detained Refugees**

### *Domestic Safeguards*

Since guesthouses are generally viewed as a form of administrative detention, refugees detained therein are accorded certain procedural rights—though many fewer than criminal detainees.<sup>29</sup>

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<sup>24</sup> 1994 Asylum Regulation, Article 4.

<sup>25</sup> Ibid.

<sup>26</sup> UNHCR Detention Guidelines., Guideline 5.

<sup>27</sup> See Chapter 2, Section 1.3.

<sup>28</sup> 1951 Convention, Article 33; 1984 United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution/ adopted by General Assembly (CAT)*, 10 December 1984. A/RES/39/46, Article 3, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b00f2224>; see also, *Chahal v UK* (app 22414/93), Judgment of November 1996 (1997); *Gorki Tapia Paez v. Sweden* Communication 83/1997, CAT/C/20/D/83/97.

<sup>29</sup> Those charged with criminal offences are guaranteed the right to: be notified promptly for the reasons for the arrest and the charges brought; be brought before a court within 48 hours of arrest; have next of kin informed immediately of the arrest or detention; be brought to trial in a reasonable period of time; and be compensated if any of these provisions are violated. See Turkish Constitution, Article 19. Refugees who are arrested for criminal violations of the Passport Law, by, for instance, entering Turkey without documentation, are entitled to these rights. Lawyers who have worked in collaboration with hCa state that in practice, refugees, unless charged with a violation of the Turkish Criminal Code, are rarely criminally charged, or accorded the procedural rights of criminal detainees.

Article 19 of the Turkish Constitution guarantees that persons deprived of their liberty for whatever reason:

- have the right to a speedy conclusion of their case;
- may apply to a judicial body to challenge the lawfulness of his/her detention; and
- should be released if the detention is found to be unlawful.<sup>30</sup>

These rights are consistent with those articulated in the ECHR and ICCPR.<sup>31</sup> However, as discussed below and set out in Chapter 2, Section 2.2, in practice, refugee detainees have no access to judicial review, or to the legal counsel necessary to carry out an effective proceeding to do so. As a result, they are unable to challenge the legality or length of their detention.

### International Safeguards

In contrast to the minimal protections for administrative detainees in the Turkish Constitution, international guidelines delineate substantially more rights for refugees held in detention. The UN Working Group on Arbitrary Detention (UNWGAD) and the UNHCR Detention Guidelines set forth specific prerequisites for the legal detention of refugees. As an overarching principle, they hold that the illegal deprivation of liberty constitutes “arbitrary detention.”<sup>32</sup> The rights articulated in these instruments, which are discussed below, include:

- communication of the **reasons for and length of detention**;<sup>33</sup>
- the right to **judicial review** of the reasons for and length of detention;<sup>34</sup> and
- **the right to legal counsel**, including the right to contact a lawyer, local UNHCR offices, other agencies or non-governmental organizations.<sup>35</sup>

#### 2.3.1 Communication of Reasons for and Length of Detention

International guidelines are unambiguous with regard to the right of refugees to be informed of the reasons for their detention and their rights while detained. UNHCR's Detention Guidelines provide that, if detained, asylum seekers:

receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand.<sup>36</sup>

Similarly, the UNWGAD holds that:

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<sup>30</sup> *Ibid.*

<sup>31</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), 4 Nov 1950, ETS 5, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3b04>, Article 5(4), provides: “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”; see also, United Nations General Assembly, *International Covenant on Civil and Political Rights* (ICCPR), Article 9(4), 16 Dec 1966, United Nations Treaty Series vol. 999, p. 171, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3aa0>.

<sup>32</sup> UN Working Group on Arbitrary Detention (UNWGAD), *Civil and Political Rights, Including Questions of Torture and Detention Report*, E/CN.4/2000/4, 28 December 1999, *passim*.

<sup>33</sup> UNHCR Detention Guidelines, Guideline 5(i); UNWGAD, Annex 2, Principle 8.

<sup>34</sup> UNHCR Detention Guidelines, Guideline 5 (iii); UNWGAD, Annex 2, Principle 8.

<sup>35</sup> UNHCR Detention Guidelines, Article 5(ii), UNWGAD, Annex 2, Principle 2.

<sup>36</sup> UNHCR Detention Guidelines, Guideline 5(ii).



Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure...<sup>37</sup>

Under international law, authorities are also required to provide information about the length of the detention.<sup>38</sup>

As discussed in Chapter 2, Section 2.1, none of the interviewees were informed of the reasons for their arrest, the expected length of or rights in detention. Many faced indifference or aggression from the police when they asked for this information. Similarly, none were given information about the expected length of their detention, leading to feelings of hopelessness and depression.

### 2.3.2 Judicial Review

One of the central rights of detainees, delineated under both international and domestic law, is the right to challenge the lawfulness of one's detention in court.<sup>39</sup> The UNCHR Detention Guidelines provide that refugees in detention have the right:

to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend.<sup>40</sup>

In a similar vein, the UNWGAD establishes the right to “apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.”<sup>41</sup> Article 19 of the Turkish Constitution also guarantees the right to apply to a judicial body to challenge the lawfulness of one's detention.<sup>42</sup>

As the findings of this report indicate (see Chapter 2, Section 2.2), however, refugees held in guesthouses in Turkey have no recourse to judicial review to challenge the legality or the length of their detention. This is clearly linked to the fact that they also have no substantial access to legal counsel. It also is connected to the fact, as discussed below, that detainees are rarely informed of the status of their asylum applications, which prevents them from being able to determine whether the proceedings are being carried with “due diligence.”

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<sup>37</sup> UNWGAD, Annex 2, Principle 8.

<sup>38</sup> E.g., ECHR, Article 5.

<sup>39</sup> Turkish Constitution, Article 19; ICCPR, Article 9(4); ECHR, Article 5(4).

<sup>40</sup> UNHCR Detention Guidelines, Guideline 5(iii).

<sup>41</sup> UNWGAD, Annex 2, Principle 8.

<sup>42</sup> Turkish Constitution, Article 19.

### 2.3.3 The Right to Legal Counsel

Refugees in detention have the right to legal counsel,<sup>43</sup> and should be notified of this right upon being detained.<sup>44</sup> International guidelines clearly set out refugees' right to communicate with legal counsel, as well as other agencies and advocates.<sup>45</sup> The UNHCR Detention Guidelines require that refugees have access to free legal aid.<sup>46</sup>

Moreover, in order for detainees to receive effective legal counselling, they should be provided with adequate time and privacy during the visits from lawyers and advocates. Article 18(3) of The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, for instance, states that:

The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances...

Although Article 19 of the Turkish Constitution does not explicitly set out the right of administrative detainees to legal counsel, clearly the articulated right to judicial review would not be effective if carried out without the benefit of legal counsel. This is certainly the case for refugees, the vast majority of whom speak no Turkish. Other than an implied right to legal counsel, refugees are not guaranteed the right to access other advocates or agencies.

In practice, as discussed in Chapter 2, Section 2.3, foreign nationals in guesthouses are provided only sporadic access to lawyers. Those interested in applying for refugee status are often given access to visiting UNHCR representatives, but this is certainly not the case in all guesthouses in Turkey. Visits by other international agencies, NGOs or advocates are strictly prohibited. Neither lawyers, UNHCR representatives nor any other advocates are provided access to asylum seeker held in airport transit zones.

## **2.4 Length of Detention**

International law and guidelines hold that the detention of refugees should be limited, and that any procedures carried out during a refugee's detention be carried out with "due diligence." Lengths of detention deemed lawful vary according to the specifics of each case, but will be found "excessive" if the procedures are carried out without due diligence.<sup>47</sup> The European Court of Human Rights and the United Nations Human Rights Committee emphasize that expulsion procedures, for instance, be carried out with "due diligence" rather than specifying a maximum length of time for detention.<sup>48</sup> UNWGAD states that a maximum period of detention "should be set by law and the custody may in no case be unlimited or of excessive length."<sup>49</sup>

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<sup>43</sup> UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 17(1), 9 December 1988, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b38b34>.

<sup>44</sup> UNHCR Detention Guidelines, Guideline 5(ii), UN, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 17(2).

<sup>45</sup> UNHCR Detention Guidelines, Guideline 5(v); UNWGAD, Annex 2, Principle 2; UN, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principles 16 & 18.

<sup>46</sup> UNHCR Detention Guidelines, Guideline 5(ii); UNWGAD, Annex 2, Principle 10.

<sup>47</sup> UN Doc. CCPR/C/79/Add.70 (1996) (holding that the Swiss practice of three-month long detention of foreign nationals for the preparation of temporary residence permit and waiting times ranging from nine months to a year for the preparation for expulsion as excessive and discriminatory).

<sup>48</sup> *Chahal v UK* (app 22414/93), Judgment of n/d November 1996; *Kolompar v Belgium*, Judgment of 24 September 1992.

<sup>49</sup> UNWGAD, Annex 2, Principle 7.

Turkish regulations are silent on the appropriate length of detention in guesthouses. As a starting point, Turkey's 1983 Directive on Refugee Guesthouses (1983 Directive) emphasizes that a refugee's stay in a guesthouse is "temporary."<sup>50</sup> Pursuant to that directive, refugees can only be kept in detention until they have obtained visas to leave the country or obtained permission from the MOI to reside in a satellite city.<sup>51</sup>

The only reference to a specific time frame to process the asylum applications of detainees is set forth in Section 13 of the 2006 Circular. That provision holds that, pursuant to an expedited procedure, authorities must process the asylum applications of foreign nationals who have been detained for illegal exit or entry within five working days.<sup>52</sup> In practice, as discussed in Chapter 2, Section 3, the asylum application process generally takes several months.

### ***3 Detention Conditions***

#### *Minimum Standards Regarding Conditions in Guesthouses*

All detainees, including refugees, have the right to be treated in conformity with international norms and standards, as set forth in such instruments as the United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Various sources of international law are also both binding and instructive regarding the conditions that refugees experience in detention, including the ICCPR, the ECHR, and the UNHCR Detention Guidelines.

Detention conditions that fall below these standards may constitute "inhuman or degrading treatment."<sup>53</sup> This kind of treatment is likely to occur under deprivation of liberty.<sup>54</sup> For treatment to be considered inhuman or degrading it must induce suffering and humiliation beyond what is expected with a legitimate form of treatment or punishment.<sup>55</sup> When lawful procedures are carried out in an unlawful manner, they may also constitute inhuman or degrading treatment.<sup>56</sup> This type of mistreatment should be distinguished from "torture," which is characterized by treatment that is particularly serious and cruel,<sup>57</sup> severe and intentional in nature.<sup>58</sup>

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<sup>50</sup> 1983 Directive, Article 16.

<sup>51</sup> *Ibid.*

<sup>52</sup> While hCa does not support the use of an expedited process for the determination of asylum applications, this provision is included to illustrate the fact that the Ministry of Interior, in issuing this regulation, expressed an intention to detain refugees for a limited period of time.

<sup>53</sup> The absolute prohibition against torture and inhuman and degrading treatment is enshrined in the ICCPR (Articles 7 and 9), CAT (Articles 1 and 16) and the ECHR (Article 3).

<sup>54</sup> E.g., CAT, Article 1 states that pain and suffering arises from or is inherent in lawful sanction.

<sup>55</sup> E.g., *V. v. United Kingdom* (App. 24888/94), Judgment of 16 December 1999, para. 71.

<sup>56</sup> *Van der Ven v. Netherlands* (App. 50901/00), Judgment of 4 February 2003, paras. 62 & 63 (ruling that close body searches, which are sanctioned if carried out for legitimate security concerns, constituted degrading and inhuman treatment, and ill treatment when carried out in an unlawful manner); see also *Weeks v United Kingdom*, Judgment of 4 December 1995, (holding that a punishment that is in excess of the offence may be a violation of Article 3 of the ECHR).

<sup>57</sup> See e.g., *Ireland v. United Kingdom*, Judgment of 18 January 1978, para. 167: "...it appears on the other hand that it was the intention that the Convention, with its distinction between 'torture' and 'inhuman or degrading treatment,' should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering."

<sup>58</sup> Article 1 of the CAT, for instance, defines torture as follows:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating

Turkey has not issued a law or regulation outlining the minimum standards relating to conditions in foreigners' guesthouses. That said, in 1983, Turkey issued a directive on the minimum standard for material conditions in "refugee guesthouses" (1983 Directive). In fact, there are no explicitly designated "refugee guesthouses" in Turkey.<sup>59</sup> While there has been no ruling as to whether the 1983 Directive, which has not been repealed, is binding on conditions in foreigners' guesthouses, it provides persuasive guidance on the standards that should apply to conditions in foreigners' guesthouses. This report relies on the 1983 Directive as a basis for recommendations regarding material conditions in guesthouses.

As discussed below, and in Chapter 2, Section 4, many practices within guesthouses do not comply with either international standards or domestic law.

### **3.1 Segregation**

International standards provide that different categories of detainees must be accommodated in separate areas of detention facilities, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.<sup>60</sup> In particular, international law stresses the requirement that convicted criminals be separated from those accused of crimes, as well as those who have not been charged with criminal offences at all.<sup>61</sup> In the context of the detention of refugees, international standards similarly state that refugees should not be held with those accused of or convicted of crimes (unless so charged or convicted themselves).<sup>62</sup> These standards also hold that detained female refugees should be accommodated separately from male refugees, unless they are close family relatives.<sup>63</sup> As discussed in more detail below, at Section 3.10, international standards also require minors, including minor refugees, to be segregated from adults and from those accused or convicted of crimes.<sup>64</sup>

The 1983 Directive is silent regarding the separation of criminal offenders from other detainees or the need for vulnerable people, such as minors and the elderly, to be housed separately.<sup>65</sup> The Directive does state that a foreign national's family status should be taken into account when determining where to house a detainee in a guesthouse.<sup>66</sup> It sets out no specific guidelines on the procedure to follow when the family in detention includes minors.

In all facilities surveyed, male and female refugee detainees were housed in separate areas. However, guesthouses regularly accommodate those accused and convicted of crimes, and those

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or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

<sup>59</sup> 1983 Directive, Article 1 defines "refugee guesthouses" as providing "...temporary accommodation, subsistence and other expenses to foreign nationals who have arrived in Turkey with a passport or illegally, who are to be sent to a third country, or who are applying for asylum to stay in Turkey until procedures relating to their case are concluded."

<sup>60</sup> UN, *Standard Minimum Rules for the Treatment of Prisoners*, Articles 8 & 68, 30 August 1955, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b36e8>.

<sup>61</sup> ICCPR, Article 10(1)(a).

<sup>62</sup> UNHCR, Executive Committee of the High Commissioner's Program, EC/49/SC/CRP.13, 4 June 1999, Standing Committee, 15th meeting, *Detention of Asylum-Seekers and Refugees: The Framework, The Problem and Recommended Practice*, Article 26(f); UNHCR Detention Guidelines, Guideline 10(iii).

<sup>63</sup> UNHCR Detention Guidelines, Guidelines 8 & 10(ii).

<sup>64</sup> UNHCR, *Detention of Asylum-Seekers and Refugees*, op cit., Article 26(f); UNHCR Detention Guidelines, Guideline 10(iii).

<sup>65</sup> The detention of vulnerable people and minors are discussed in section 3.10 of this chapter.

<sup>66</sup> 1983 Directive, Article 17.

held for non-criminal reasons together. This may be due in part to the fact that the Tracing and Control Section of the Foreigners' Department is responsible for detaining and processing all foreigners, criminal offenders among them. Similarly, minor refugees are regularly held together with adults until age determination test results are made available, when they may be transferred to special facilities for minors. Minor refugees may also be segregated from their own family members if the minor is a different sex from his or her parent or guardian (e.g., a minor son will be housed with men, while his mother, with women).

### **3.2 Sleeping Accommodation and Bedding**

Detainees have the right, under international guidelines, to be provided with a separate bed, and with sufficient, clean bedding, changed often enough to ensure its cleanliness.<sup>67</sup> Sleeping accommodation must meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.<sup>68</sup> The 1983 Directive provides no guidance in this regard.

As set out in Chapter 2, Section 4.2, interviewees consistently complained of overcrowding and completely insufficient bedding and numbers of beds. Many reported sleeping on the floor of detention facilities.

### **3.3 Light and Ventilation**

According to international standards, detention facilities must provide sufficient amounts of light and ventilation. Accordingly, windows must be large enough to allow detainees to read or work by natural light, and constructed so that they allow the entrance of fresh air whether or not there is artificial ventilation.<sup>69</sup> In addition, sufficient artificial light must be provided to allow detainees to read or work without injury to eyesight.<sup>70</sup> The 1983 Directive is silent on this point.

As discussed in Chapter 2, Section 4.3, interviewees reported that most guesthouses had windows, but that ventilation was well below standard: facilities tended to be unbearably hot in summer, and very cold in winter. In guesthouses where detainees were permitted to smoke, poor ventilation was a significant source of discomfort.

### **3.4 Hygiene and Sanitation**

International standards point to the need for adequate and clean toilets and showers in detention facilities, allowing detainees to shower at a temperature appropriate to the climate, as frequently as necessary to maintain personal hygiene.<sup>71</sup> Detainees should also be provided with water and any toilet articles necessary to maintain health and cleanliness.<sup>72</sup> General standards of hygiene and cleanliness must be maintained in all detention facilities.<sup>73</sup>

The 1983 Directive has no provisions concerning hygiene, but does state that guesthouses are to be equipped with a laundry room, so that the detainees can wash their own clothes.<sup>74</sup>

As discussed in Chapter 2, Section 4.4, detainees reported the ability to shower weekly, though most stated that no hot water was available. They also alleged that they had to pay for their own

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<sup>67</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 19.

<sup>68</sup> *Ibid.*, Article 10.

<sup>69</sup> *Ibid.*, Article 11(a).

<sup>70</sup> *Ibid.*, Article 11(b).

<sup>71</sup> *Ibid.*, Articles 12 & 13.

<sup>72</sup> *Ibid.*, Article 15.

<sup>73</sup> *Ibid.*, Article 26(b).

<sup>74</sup> 1983 Directive, Article 20.

soap and towels. Moreover, detainees commonly reported having to clean their own living spaces, and many suffered insect bites and skin problems due to unclean facilities.

### **3.5 Nutrition**

According to international norms, detainees must be regularly provided with drinking water and “food of nutritional value, adequate for health and strength, of wholesome quality and well prepared and served.”<sup>75</sup> Similarly, the 1983 Directive states that detainees should be given three meals a day,<sup>76</sup> which, based on advice from a doctor, should provide them with sufficient calories.<sup>77</sup> The directive calls for the establishment of a “food hall,” where detainees can be seated according to family and national preferences.<sup>78</sup> It also calls for the availability of a “canteen,” where non-alcoholic drinks and snacks can be served.<sup>79</sup>

The findings of the report consistently point to a caloric and nutritional deficiency in the meals provided at the guesthouses as well as a lack of safe drinking water. Detainees who can afford to do so, are forced to get food delivered—at highly inflated prices—from local shopkeepers.

### **3.6 Recreation**

International law clearly indicates that the right to enjoy exercise and recreation is necessary for the psycho-social and physical well being of detainees.<sup>80</sup> The 1983 Directive is silent on the right of detainees to enjoy outdoor activities or exercise, but does state that guesthouses must have a recreation and reading room.<sup>81</sup>

Despite this, no recreational facilities were reported in any of the foreigners' guesthouses surveyed. Some unaccompanied minors detained in a holding facility for Turkish minors in Istanbul did, however, have access to a television and Turkish books. Only in the Kırklareli Gazi Osman Paşa Foreigners' Guesthouse were detainees occasionally allowed outside for exercise and fresh air.<sup>82</sup>

### **3.7 Medical Services**

International standards hold that detainees be provided medical care whenever necessary, free of charge.<sup>83</sup> They also require detention facilities to employ a medical officer, to evaluate and treat detainees' medical and psychiatric needs, and report on conditions within the facility.<sup>84</sup> These requirements are particularly important for refugees, since many arrive in the country of asylum with physical and mental health symptoms resulting from torture in the country of origin.

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<sup>75</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 20.

<sup>76</sup> 1983 Directive, Article 19.

<sup>77</sup> *Ibid.*, Articles 12 (j) & 19.

<sup>78</sup> *Ibid.*, Article 18.

<sup>79</sup> *Ibid.*, Articles 18 & 21.

<sup>80</sup> Articles 21 and 40 of the Standard Minimum Rules for the Treatment of Prisoners, for instance, maintains that daily exercise is necessary, outdoors whenever possible; that adequate space and equipment be available for recreational training; and that facilities have adequately stocked libraries that detainees be encouraged to use.

<sup>81</sup> 1983 Directive, Articles 19 & 21.

<sup>82</sup> See Chapter 2, Section 4.6.

<sup>83</sup> UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24.

<sup>84</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 22(1).

Mental health care for refugees is also vital, since there is increasing evidence suggesting that indefinite detention with the threat of forcible return causes emotional distress.<sup>85</sup>

The 1983 Directive establishes that the detainees with health problems are to be monitored and treated by the Health and Social Services Bureau of the guesthouse.<sup>86</sup> Those in need of further medical attention are to be checked into a hospital.<sup>87</sup> The Health and Social Services Bureau is also responsible for the mental health problems of detainees.<sup>88</sup>

On its face, Turkish law closely complies with international minimum standards regarding the right of refugees to access free medical and mental health care in detention. However, the findings of this report illustrate that medical services are well below standard. As discussed in Chapter 2, Section 4.7, detainees regularly reported that their medical problems were ignored by attending police officers and that requests to be examined by a doctor were denied. In some cases, serious health problems went undiagnosed for weeks, leading to the exacerbation of the condition and a threat to public health. Moreover, detainees were almost always required to pay for medical assistance, which often is prohibitively expensive. No mental health services are available in guesthouses and all interviewees reported the harmful psychological impact of prolonged detention.

### **3.8 Contact with the Outside World**

As discussed above at Section 2.3.3, international guidelines provide that refugees are entitled to receive visits from lawyers and advocates, the UNHCR, the International Red Cross, duly authorized NGOs, consular representatives and relatives.<sup>89</sup> They also provide that detainees be able to communicate with the outside world, including by telephone, fax or electronic mail.<sup>90</sup> By contrast, the 1983 Directive states that only officials, asylum seekers and refugees may enter guesthouses.<sup>91</sup> Other visitors must obtain permission from the Ministry of Interior to visit detainees in guesthouses.<sup>92</sup> The 1983 Directive makes no provision for the right of detainees to communicate with people outside the guesthouse.

In practice, interviewees reported that the only visitors allowed access to refugees in guesthouses are detainees' lawyers and family members, and then, only sporadically. Moreover, as discussed in Chapter 2, Section 4.8, although detainees are entitled to use phones to call out, phone cards for public phones are only available at inflated prices and the demand for phones is very high, limiting access and privacy. The limitations on visitors, as well as the high costs of phone calls, lead many detainees to feel isolated and depressed.<sup>93</sup>

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<sup>85</sup> See for instance, HM Inspectorate of Prisons (2006), *Foreign national prisoners: A thematic review*, p. 58 for evidence of self-harm; see also, Peoples Inquiry into Detention (2006), *We've Boundless Plains to Share: The First Report of the People's Inquiry into Detention*, for a discussion of the psycho-social strains placed on detainees, November 2006, available at: <http://www.peoplesinquiry.org.au/psychological.html>.

<sup>86</sup> 1983 Directive, Article 14 (d).

<sup>87</sup> *Ibid.*, Article 14 (e).

<sup>88</sup> *Ibid.*, Article 14.

<sup>89</sup> UNWGAD, Annex 2, Principles 2 & 10; UNHCR Detention Guidelines, Guideline 5(v); UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 19; UN, Minimum Rules for the Treatment of Prisoners, Articles 37 & 38.

<sup>90</sup> UNWGAD, Annex 2, Principle 2.

<sup>91</sup> 1983 Directive, Article 32.

<sup>92</sup> *Ibid.*

<sup>93</sup> See Chapter 2, Section 4.7.1.

### **3.9 Treatment by Staff**

Staff at detention facilities have an obligation, pursuant to international guidelines, to conduct themselves in an appropriate manner,<sup>94</sup> and are specifically prohibited from using force with detainees, except in prescribed circumstances, such as self-defence.<sup>95</sup> The 1983 Directive is silent on this point.

Despite these requirements, as discussed in Chapter 2, Section 3.9, interviewees described the treatment by police in guesthouses as “hostile,” “aggressive” and “indifferent.” They also reported that police engaged in verbal abuse, beating, slapping, pushing, and hitting with sticks. Notably, 10 incidences of *falaqa*—the practice of beating the soles of the feet—were reported by detainees held at the Kırklareli Gazi Osman Pasa Guesthouse.

### ***4 Protection of Vulnerable Refugees***

International guidelines provide that state authorities are obliged to identify and assess the needs of vulnerable refugees in detention, and provide them with special care, where necessary.<sup>96</sup> Vulnerable refugees include victims of torture and trauma, unaccompanied minors, the elderly, people with disabilities, those in need of medical assistance, and women with special needs.<sup>97</sup> The UNHCR Detention Guidelines hold that the state should actively consider alternatives to the incarceration of vulnerable refugees, and that they should only be detained following certification from a qualified medical practitioner that detention will not adversely affect their health or well being, and that medical and/or social support and follow up be regularly available.<sup>98</sup>

Turkish legislation only addresses the treatment of unaccompanied minors. Neither the 1983 Directive, 1994 Regulation nor 2006 Circular provide for the protection or special treatment for other vulnerable refugees. This is a significant gap in domestic legislation.

#### Minors

“The best interest of the child” is at the heart of international standards regarding the treatment of minors.<sup>99</sup> In the context of detention, international law and guidelines hold that minors may be detained in only very limited circumstances. The United Nations Convention on the Rights of the Child (UNCRC), to which Turkey is a party, asserts that detention should only be

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<sup>94</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 48.

<sup>95</sup> *Ibid.*, Article 54(1).

<sup>96</sup> See e.g., UNHCR Detention Guidelines, Guideline 7; UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 5(2) & 31; UN, Standard Minimum Rules for the Treatment of Prisoners, Article 23(1); European Union, *Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers and Refugees*, Articles 17 & 20, 6 February 2003, 2001/0091, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ddcfda14>; UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty, passim.*, resolution adopted by the General Assembly 14 December 1990, A/RES/45/113, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b00f18628>.

<sup>97</sup> UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, Section 3.4.1, September 2005, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=42d66dd84>.

<sup>98</sup> UNHCR Detention Guidelines, Guideline 7.

<sup>99</sup> UN General Assembly, *Convention on the Rights of the Child* (CRC), Article 3, adopted by the General Assembly, 20 November 1989, UNICEF, available at: <http://www.unicef.org/crc>; EC Directive Laying down Minimum Standards on Reception, Article 18.



considered “as a measure of last resort and for the shortest appropriate period of time.”<sup>100</sup> The ECHR holds that minors shall be detained only “by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.”<sup>101</sup> The UNHCR Detention Guidelines state that minor asylum seekers must not be detained at all.<sup>102</sup> Those Guidelines recommend the release of minors either to the care of family members or, if impossible, to the care of a child services agency.

The 2006 Circular emphasizes that unaccompanied minor applications for temporary asylum be processed in an expedited manner so that they can be turned over to accommodation centers run by national child services as quickly as possible.<sup>103</sup> The 2006 Circular recommends the use of medical tests for determining the age of minors if the minor does not have documentary proof of his or her age, or the police have doubts about the age stated in such documentation.<sup>104</sup> It specifically allows minors to be held in guesthouses until the results of these tests are released, during which time, as mentioned above at Section 3.1, they are held with adults and those who may have been accused of and convicted of crimes.

As discussed in Chapter 2, Section 4.10, the Ministry of Interior uses x-ray bone tests to determine the age of minor asylum seekers. These tests are problematic for several reasons. First, the tests can be carried out without informed consent from the minor or his or her guardian. Second, the findings of these tests are inconclusive.<sup>105</sup> Third, no margin of error is applied to the result of the tests, as recommended by international standards. The 1997 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum state that when scientific procedures are used to determine the age of the child, margins of error should be applied.<sup>106</sup> Fourth, given the lack of precision in age determination tests, the decision should take the psychological maturity of the applicant, as well as the physical appearance.<sup>107</sup> No such psychological analysis is undertaken in Turkey. Finally, the Guidelines stipulate that if the exact age is uncertain, the child should be given benefit of the doubt.<sup>108</sup> A similar policy has also been adopted by the 2005 UNHCR Procedural Standards for Refugee Status Determination under UNHCR's Mandate, which states that age assessment should be resolved in the favor of the child.<sup>109</sup> The benefit of the doubt is not generally weighed in favor of minor asylum applicants in Turkey.

Under the UN Rules for Juveniles Deprived of their Liberty, states are required to provide special education programs to children of foreign origin with particular cultural or ethnic needs. No such educational programs were reported by minors detained in guesthouses.

As a result, minor asylum seekers not only are held in detention while awaiting age determination test results, but may be held there indefinitely if improper standards are applied during the age

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<sup>100</sup> CRC, Article 37.

<sup>101</sup> ECHR, Article 5(1)d.

<sup>102</sup> UNHCR Detention Guidelines, Guideline 6.

<sup>103</sup> 2006 Circular, Section 6.

<sup>104</sup> *Ibid.*

<sup>105</sup> Physicians for Human Rights (2004), *Prominent Dentists and Physicians Call on US Authorities to Stop Using X-Rays to Determine the Age of Young Asylum Seekers*, available at: <http://physiciansforhumanrights.org/library/news-2004-06-03.html>

<sup>106</sup> UNHCR *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, Article 5.11.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> UNHCR, Procedural Standards, Section 3.4.5, para 9.

determination process itself. This means that, contrary to the UNCRC, minors may be held in detention, not as a last resort, but as a regular practice.

## CHAPTER 2 : FINDINGS BASED ON INTERVIEWS WITH DETAINED REFUGEES

*I was arrested with a Senegalese friend when I was selling bottles of perfume and watches in a bazaar. I was trying to earn the money I needed to go to Kayseri to register with the police there. I had my UNHCR document with me and my Senegalese friend had a passport with him. The police took us to the police station in Cebeci.*

*In Cebeci, we spent three days without anything to eat. We slept on a foam mattress on the floor. The bed covers were filthy. There wasn't a toilet in the room. We also had to drink water from the bathroom. There was a nice police officer who took us to the bathroom but the other one never listened to us. I started to get sick there. It was very cold. When I was arrested I was feeling dizzy. I asked for medicine but the police refused to give it to me.*

*Three days after arriving in Cebeci, my Senegalese friend was deported and the police took me to the Zeytinburnu Foreigner's Department. We were given soup with bread twice a day, but I was still hungry afterward. On the weekends, I only got small slices of bread with olives once a day. The room and the water in the bathroom were so cold I couldn't wash myself. The tap water from the bathroom made me feel sick. I slept on the carpet and found some covers. The room was very cold. I couldn't sleep because of the insects on the floor. When we all lay down on the floor to sleep our feet would touch somebody else. It was so crowded that we couldn't turn. Everybody was so tense that when someone touched them when they were asleep they jumped or got upset.*

*When I was in Zeytinburnu I thought back to the time I was arrested in Mauritania. I was feeling very sick, so I kept to myself. The police wouldn't listen to anyone. I wanted to complain about my kidney and stomach problems, but they just slapped people and made them go away if they complained.*

*I called ICMC (the International Catholic Migration Commission) from detention. I think they spoke with the police. I was meant to go to Kayseri but the police said that I had to go to Konya with three other Africans. The police said that the men had to each pay \$100 to cover the transportation to Konya. The police took one of us outside to collect money. In the end, there were collections from the community so we were able to pay the police. When we arrived in Konya, there was nowhere to stay and we had no money.*

*Now I am very afraid. I have no money because I am afraid to sell watches. I had to come back to Istanbul because there was nowhere for me to stay in Konya. I am scared of the police so I sometimes don't leave the house for a couple of days in a row. I can't afford to see the doctor for the kidney problem I got in Zeytinburnu.*

Mauritanian Refugee, December 2006

The experience of this Mauritanian refugee in detention is representative of many aspects of the experience of people interviewed for this report. Like many other interviewees, he states that he was kept in sub-standard conditions, was intimidated by the police and was unable to get medical attention. He also describes being required to pay an inflated amount for his transfer to a satellite city.

This chapter discusses the results of surveys conducted with the 40 detained or formerly detained refugees interviewed for this report. The findings of the surveys are discussed in the

context of procedural rights (including the right to access asylum procedures, procedural safeguards and the length of detention), a range of conditions in detention, and the treatment of minor refugees in detention.

### *1 Access to Asylum Procedures*

The interviewees held in guesthouses reported significant barriers to accessing the asylum procedure in Turkey. Primarily, the reported reasons for this included a lack of information about asylum procedures and refusal by police to take asylum applications.

Notably, the interviewees held in airport transit zones reported that they were completely barred from applying for asylum. As discussed below, the failure by refugees to access the asylum procedure has led to numerous instances of *refoulement*—the return to the frontiers of territories where one's life or freedom would be threatened.

Out of the 40 interviewees, 18 had not applied for asylum when they were arrested. Of these, 11 reported applying for asylum in detention. hCa counseled nine of 11 interviewees regarding their asylum applications when they were in detention. These refugees all reported extreme difficulty in submitting their asylum applications either in writing or orally. Three reported that the police took their applications, while the other six reported being released with deportation orders despite numerous attempts to submit asylum applications.

Of the three interviewees whose asylum applications were received by police:

- One interviewee was released to her satellite city after four months of detention with her three minor children;
- Another stated that he was detained for six months before he applied for asylum due to a lack of information about the process, and remained in detention for another five months after he applied.
- A third interviewee reported that his attempts to submit both written and oral asylum applications were denied by the police for four months. As of November 2007, seven months after his application was finally received, he is still in detention.

Of the six interviewees released with deportation orders:

- Two were told by the police in the Kumkapı Guesthouse that the Turkish state does not take asylum applications and were referred to the UNHCR. When they contacted UNHCR, they were informed that the UNHCR could only take their asylum applications if they submitted an asylum petition to the police. They alleged that the police never accepted their petitions for asylum. They were later released with deportation orders.
- Four detained in the Kırklareli Gazi Osman Pasa guesthouses stated that prior to being released with deportation orders, police forced them to write a letter withdrawing their asylum applications from the Turkish state and stating their intention never to seek asylum again. The interviewees claimed that the police had intimidated them by alleging that anyone who applies for asylum will be detained for at least two years without receiving any assistance.

### **1.1 Lack of Information**

The interviewees who made their asylum applications in detention generally claimed that they were not counseled on the asylum procedure in Turkey. Even after submitting their asylum applications, the police did not offer any advice or information on the asylum procedure. Interviewees also reported being faced with hostile or indifferent attitudes from the police when they inquired about placing an asylum application or requested information about the status of their case. The lack of interpreters was identified by interviewees as a further impediment to their ability both to obtain relevant information and generally access the asylum system.

Interviewees who had registered with the UNHCR said that they were unaware of the requirement to present oneself at the designated satellite city to register with the police. The interviewees held the incorrect assumption that once they had been issued a UNHCR Asylum Seeker Certificate, they could not be deported.<sup>110</sup> In recent months, however, an increased awareness of the obligation to reside in satellite cities has been noted among refugees in detention.

Although the MOI has printed information brochures about the domestic asylum procedures in a range of refugee languages, these brochures were not reported to be distributed to refugees in detention.

### **1.2 Police Refusal to take Asylum Applications**

*I had an interview with the police officer. I told him that my passport was not a fake passport. The interpreter wasn't good. The officer told me that I must pay to get a ticket to get home. I said that I don't have money to get a ticket and I cannot return home because I am a refugee. He told me to call UNHCR because they can't do anything for me. But UNHCR told me I should tell the police. I told the police many times that I wanted to give my petition to claim asylum but the police said no. In the end, I was released with an order of deportation so the police never took my asylum application.<sup>111</sup>*

Like this refugee, interviewees often reported that the police refused to accept their written asylum applications. In some instances, interviewees said that police provided misleading or false information about the asylum procedures. Despite interventions by hCa and the UNHCR, many refugees held in guesthouses across Turkey, including in Ankara, Edirne and Hatay, have unsuccessfully attempted to apply for asylum with the police.

In the summer of 2007, for instance, 51 Afghan refugees were reported to have been detained for two months in a makeshift detention facility on the Aegean Coast near Ayvalık. They claimed that police refused to process their asylum applications. In particular, they alleged that when they submitted written asylum applications, the police claimed that they were going to fax the asylum petitions to MOI. Instead, the following day, the Afghan men were distributed paperwork from the Afghan Consulate to process their deportation from Turkey. The police, they claim, ordered them to sign the letters. Upon their refusal, the detainees received a visit from a local state official who told them to sign the papers. After a day and a half of refusing to sign, the detainees reported that the police beat some of them. They also reported being denied food and water for 24 hours. Despite efforts by hCa and Amnesty International - Turkey to intervene to prevent the deportation, contact was lost with these detainees.

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<sup>110</sup> The Asylum Seeker Certificate is issued by the UNHCR after registration with that agency is complete, and includes the refugee applicant's name, country of origin, and the satellite city to which he or she has been assigned.

<sup>111</sup> Congolese refugee held in the Kumkapı Guesthouse.

### **1.3 Airport Transit Zones**

Based on hCa's attempts to assist refugees held in detention facilities in airports in Turkey, it is apparent that MOI will not accept asylum applications from transit zones. As discussed below, MOI also refuses to allow lawyers, UNHCR representatives, or other advocates to visit these areas to counsel detainees. hCa receives several calls a year from detention facilities in airports, in particular Istanbul Ataturk Airport. All detainees report being denied their right to apply for asylum and are immediately deported.

In December 2006, for instance, a Nigerian refugee traveling with false documentation from Nigeria to the United Kingdom was detained in the Istanbul Ataturk Airport during a stop over. He informed the police both orally and in writing that he wanted to apply for asylum on the basis of his membership in a political group. If returned to Nigeria, he said, he would face torture and death. The police refused to accept his application for asylum. Despite attempts by hCa to stop his deportation, and although an application was submitted to the European Court of Human Rights and contact was made with the UNHCR, he was deported to Nigeria. For more details about his case, please see Appendix 2.

### **1.4 Refoulement**

When in detention, refugees appear to incur a greater risk of deportation than when residing outside detention facilities. The instances of *refoulement*<sup>112</sup> reported to hCa in 2007 include:

- two Iranians and three Sri Lankans deported from the Istanbul Ataturk Airport without being allowed to apply for asylum;
- a recognized Iranian refugee deported while awaiting re-settlement after being detained for failing to register with Turkish police;
- an Iranian refugee deported from the Aliens' Guesthouse in Ankara despite having an open file with UNHCR;
- as discussed above, 51 Afghan refugees threatened with deportation from Ayvalık after police refused to accept their asylum applications and both verbally and physically abused (the whereabouts of these refugees is unknown and the likelihood is that they have been deported); and
- three Baha'i Iranian refugees deported despite verbally communicating their wish to claim asylum and instructions from UNHCR that the police accept their applications (they were part of a group of 60 Iranians which may also have included other refugees);

These examples point to consistent disregard by Turkish authorities of the right of detainees to access the domestic asylum process. It is hoped that the European Court of Human Rights order of July 20, 2007 to stay the deportation of an Afghan refugee will act as a catalyst for the Turkish authorities to act according to its commitment to the principle of *non-refoulement*. In the aforementioned case, although the refugee had submitted his asylum application to the UNHCR and MOI, MOI initiated deportation proceedings. At the initiation of Amnesty International – Turkey, his legal representatives successfully applied to the European Court of Human Rights to prevent his deportation.

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<sup>112</sup> Article 33 of the CAT defines *refoulement* as return to the frontiers of territories where one's life or freedom would be threatened on account of one's race, religion, nationality, membership of a particular social group or political opinion.

## 2 Procedural Safeguards

Despite procedural rights guaranteed by both international standards and domestic legislation, interviewees reported being denied:

- communication of the **reasons for and length of for detention**;<sup>113</sup>
- the right to **judicial review** of the reasons for and/or length of detention;<sup>114</sup> and
- **the right to legal counsel**, including the right to contact a lawyer, local UNHCR offices, other agencies or non-governmental organizations.<sup>115</sup>

### 2.1 Communication of the Reasons for and Length of Detention

*We always asked why we were arrested. We knew that we shouldn't be there more than two weeks or a month. So we asked why. The police said we were arrested because an African shot a gun in the air and killed a woman and they did not know which one of us had done it. Some of the policemen spoke English. Most said that they knew nothing, they were there just to guard us.<sup>116</sup>*

International guidelines provide that, if detained, refugees should receive prompt and full communication of the order of detention, together with the reasons for the order, their rights in connection with the order, in a language and in terms which they understand.<sup>117</sup> Authorities are also required to inform detainees of the length of the detention.<sup>118</sup>

None of the interviewees reported being informed of the reasons for their arrest or their rights in detention. Generally, when the interviewees asked the police for the reason for their arrest and detention, they stated that the police responded aggressively or were indifferent. Interviewees claimed that they were not provided with any information regarding the status of their application for asylum throughout their detention. Nor were they brought to court to be informed that they had been found in violation of the Passport Law for attempting to enter or exit the country illegally.<sup>119</sup>

Similarly, according to the detainees surveyed, police rarely provided information about the length of time that they were to be detained. As discussed below, at Section 4.7.1, not knowing when they might be released often lead to feelings of hopelessness and depression among the detainees.

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<sup>113</sup> UNHCR Detention Guidelines, Guideline 5(i); UNWGAD, Annex 2, Principle 8.

<sup>114</sup> UNHCR Detention Guidelines, Guideline 5 (iii); UNWGAD, Annex 2, Principle 8.

<sup>115</sup> UNHCR Detention Guidelines, Article 5(ii); UNWGAD, Annex 2, Principle 2.

<sup>116</sup> Guinean refugee who was detained in the Zeytinburnu Guesthouse. He was arrested in a series of house raids initiated following the alleged shooting of a woman in the Tarlabası district of Istanbul August 2006. Interviewees reported that about 300 African nationals were arrested during these house raids.

<sup>117</sup> UNHCR Detention Guidelines, Guideline 5(i); UNWGAD, Annex 2, Principle 8.

<sup>118</sup> E.g., ECHR, Article 5.

<sup>119</sup> As discussed in Chapter 1, refugees who enter or exit Turkey without documentation may face criminal charges for the violation of the Passport Law. Lawyers working in the field note that the Prosecutor often reviews the cases of foreigners found in violation of the Passport Law in their absence.

## **2.2 Judicial Review**

Both domestic and international standards guarantee refugees the right to apply to a judicial body to challenge the lawfulness and length of their detention.<sup>120</sup>

In practice, no system of judicial review exists in Turkey for detainees in guesthouses, and as a result, refugees have no means to challenge the legality or length of their detention.

## **2.3 The Right to Legal Counsel**

As discussed in Chapter 1, Section 2.3, refugees in detention have the right to retain legal counsel,<sup>121</sup> communicate with other agencies and advocates,<sup>122</sup> and should be notified of this right upon being detained.<sup>123</sup> They also should be provided with adequate time and privacy during visits from lawyers and advocates.

In Turkey, detained refugees' access to advocates appears to fall well below international standards. Interviewees reported having only very sporadic access to lawyers. They also said that they were unable to receive visits from any NGO advocates. Most troubling is that refugees held in airport transit zones in Turkey reported having no access at all to lawyers, the UNHCR or other agencies or advocates. This is linked to the fact that they are prevented from accessing asylum procedures altogether.

## ***3 Length of Detention***

International law and guidelines hold that the detention of refugees should be limited. If procedures implemented during a refugee's detention are not carried out with "due diligence,"<sup>124</sup> the detention will be considered "excessive."<sup>125</sup> The 1983 Directive provides that a refugee's stay in a guesthouse should be "temporary."<sup>126</sup>

As fundamental matter, since interviewees alleged that they are not provided consistent access to legal counsel, and are not informed of the status of their asylum applications, they are unable to determine whether their detention is being carried out with "due diligence." As a result, they cannot challenge the length of detention as "excessive," and as discussed above, are effectively denied the right to judicial review.

Based on information provided by the interviewees, the duration of detention periods increased over the course of 2007. This is particularly the case for refugees who first apply for asylum when in detention, who tend to be detained for at least six months. The interviewees who were detained between three months and one year applied for asylum in detention either at the end of 2006 or at the beginning of 2007. Interviewees who were found to be in violation of their residence requirements, but who had registered with UNHCR were detained for longer periods in 2007 than in 2006, when most refugees were detained for, on average, between a month and three months.

Of those interviewed, detention periods ranged from less than a week to more than a year:

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<sup>120</sup> Turkish Constitution, Article 19; UNHCR Detention Guidelines, Guideline 5(iii); UNWGAD, Annex 2, Principle 8.

<sup>121</sup> UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17; UNHCR Detention Guidelines, Guideline 5(ii).

<sup>122</sup> UNWGAD, Annex 2, Principle 10.

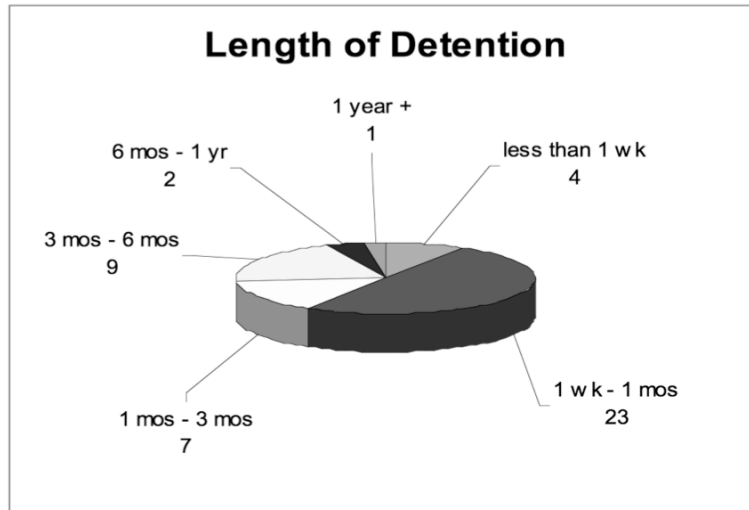
<sup>123</sup> UNHCR Detention Guidelines, Guideline 5(ii).

<sup>124</sup> *Chahal v. UK* (App. 22414/93), Judgment of n/d November 1996; *Kolompar v Belgium*, Judgment of 24 September 1992

<sup>125</sup> UNWGAD, Annex 2, Principle 7.

<sup>126</sup> 1983 Directive, Article 16.





Interviewees reported that their detention was often prolonged while they collected the money necessary to travel, along with a police officer, to their satellite cities. Detainees reported paying varying, apparently arbitrary amounts for this transportation. They typically reported being charged from \$100-\$150 per person, which is significantly higher than the actual cost of travel to any satellite city, even factoring in the cost of an accompanying police officer. Since the interviewees were never provided with official receipts upon payment of the travel fee, they were uncertain how this transaction was administered. No official regulation concerning this required fee has as come to the attention of hCa.

In November 2006, for example, an interviewee detained in the Zeytinburnu guesthouse was taken out of the guesthouse, accompanied by two police officers, reportedly to find \$300 to cover the cost of transportation to a satellite city for him and two friends. He was brought to the hCa office handcuffed asking for money. Members of his community eventually provided the full amount required. The interviewee later learned that two refugee women, who accompanied him on the bus to the same satellite city, were only charged 50 YTL each for the transportation.

#### 4 Conditions

*People live to eat and to sleep. There is nothing else to look forward to.<sup>127</sup>*

Given that MOI has denied hCa access to the guesthouses where the interviewees were held, the description of guesthouse infrastructure and conditions is based solely on information provided by interviewees.

Interviewees reported varying conditions in detention, depending on where they were accommodated. Certain common features of detention, however, were reported in all guesthouses surveyed:

- Adults and minors, convicted criminals and non-criminals, are regularly housed in the same areas.
- Overcrowding is common, often leading to detainees having to sleep on the floor with inadequate bedding.
- Ventilation is substandard. Facilities are cold in winter, hot in summer.

<sup>127</sup> Liberian refugee detained in the Hatay Guesthouse.

- Showers are usually available in all but two guesthouses—Zeytinburnu and Vatan Caddesi.
- In Izmir and Hatay detainees are given soap for free, but elsewhere, they must pay for it themselves.
- The detainees are responsible for cleaning their own cells. They sometimes must buy their own cleaning supplies.
- Meals are lacking in nutritional and caloric value. No drinking water is provided in any facility where interviewees were held.
- Recreational facilities and activities are generally unavailable.
- Medical services are inadequate and often denied.
- Outside communication is limited due to the high cost of using telephones and the limited access to visitors.
- Police officers are generally described as indifferent to refugees; at worst, they are reported to engage in unjustified physical violence.

#### **4.1 Segregation**

*When they handcuff you they treat you like a vulgar criminal... There is no distinction between treatment for someone arrested stealing and someone who doesn't have their identity card.<sup>128</sup>*

As discussed in Chapter 1, Section 3.1, international standards provide that different categories of detainees must be accommodated in separate areas of detention facilities, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.<sup>129</sup> The 1983 Directive is silent on the issue of the segregation of detainees.

All interviewees reported that guesthouses segregated detainees according to gender. The Zeytinburnu, Izmir and Van guesthouses reportedly held all the male detainees in one room and all the female detainees in another. The rooms in guesthouses in Ankara, Hatay, Edirne Tunca Camp and Kumkapı were described as medium-sized, holding 30-40 people, and segregated by sex. In the Edirne Foreigner's Department and Kırklareli Gazi Osman Pasa guesthouses the rooms were reportedly smaller, but similarly sex-segregated. Only in the Hatay and Kırklareli guesthouses were men and women reported to socialize together during recreation periods.

Other than that between men and women, there were no other types of segregation reported (for instance, by age, reason for detention, or special needs). Interviewees reported sharing the same facilities with minors as well as individuals they knew or suspected to be charged with crimes, such as drug offenses. Moreover, in some cases, the strict segregation by gender led to the separation of family members, such as minor boys from their mothers.<sup>130</sup>

#### **4.2 Sleeping Accommodation and Bedding**

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<sup>128</sup> Refugee from Ivory Coast held in the Zeytinburnu Guesthouse.

<sup>129</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Articles 8 & 68.

<sup>130</sup> See e.g., section 5.1 herein, describing the situation of a woman held four months in the Kırklareli Gazi Osman Pasa Detention Center with her three minor children. Her two sons aged 14 and 16 stayed with male adults, while her nine-year old daughter stayed with her.

*It was a room twice the size of this room [about 40m<sup>2</sup>], where more than hundred people were staying. I found out later that it was 145 people in this room. It was a really dirty place. You can find all kinds of insects there and people are sleeping on the ground. Some have some bedding and a bed but most sleep on the ground. And the beds that we were using were dirtier than the beds I see in the street.<sup>131</sup>*

As set forth in Chapter 1, Section 3.2, a detainee has the right to his or her own bed, with sufficient, clean bedding.<sup>132</sup> Despite this, interviewees consistently complained of overcrowding in guesthouses, leading to insufficient sleeping accommodation and bedding.

In Zeytinburnu, for instance, interviewees reported that 200 people were being held in an area with 16 beds. Another detainee described a room in Hatay's guesthouse with beds for 30 people that held over 100 detainees. When overcrowding occurred, detainees generally reported having to sleep on the floor. In the Kırklareli, Kumkapı and Izmir guesthouses, when a group of new detainees were taken in, interviewees reported that the police provided mattresses for the floor and extra bed covers.

Interviewees held in the Zeytinburnu and Vatan Caddesi guesthouses consistently reported that a majority of the detainees did not have any bedding at all. In other guesthouses, bedding shortages reportedly only took place when there was a large increase in the number of detainees.

#### **4.3 Light and Ventilation**

As Chapter 1, Section 3.3 describes, detention facilities must provide sufficient amounts of natural and artificial light, fresh air, and ventilation.<sup>133</sup> While guesthouses usually have windows, ventilation was generally reported to be poor. Interviewees described facilities as very hot in summer, and cold in winter.

While interviewees reported that most guesthouses have windows that can be opened slightly, they complained that the airflow is generally insufficient, especially when the guesthouses are overcrowded. Interviewees detained in guesthouses in Izmir, Edirne and Kumkapı, where smoking is allowed, maintained that the smoke and crowded conditions led to great discomfort among non-smokers and those with pulmonary problems:

*"The room is very smoky and I had breathing problems. I am still [1 month after being detained] taking antibiotics because of it."<sup>134</sup>*

Most interviewees detained in the summer reported the guesthouses to be unbearably hot. Of the detainees surveyed, only those held in Kırklareli claimed to have sufficient heating in winter.

#### **4.4 Hygiene and Sanitation**

*There were insects and fleas on the floor. There was no hot water. We had to put water on our hands and wash ourselves down with that. The toilet was also very dirty. There were days when we didn't have any water. When there was no water there was mess everywhere. It really was not clean. I had skin infections because of these conditions.<sup>135</sup>*

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<sup>131</sup> Iranian refugee held in Zeytinburnu Guesthouse.

<sup>132</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 19.

<sup>133</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 11.

<sup>134</sup> Congolese refugee held in the Zeytinburnu Guesthouse.

<sup>135</sup> Congolese refugee held in the Zeytinburnu Guesthouse.

As discussed in Chapter 1, Section 3.4, detainees must be provided with clean toilets and showers, allowing them to shower frequently enough to maintain personal hygiene, and at appropriate temperatures.<sup>136</sup> They also should be provided with water and any toilet articles necessary to maintain health and cleanliness.<sup>137</sup> General standards of hygiene and cleanliness must be maintained in all detention facilities.<sup>138</sup>

While interviewees reported that showers are generally available in guesthouses, they stated that they regularly had to pay for their own toiletries and towels. In the Kirklareli, Hatay, Izmir, Edirne Tunca Camp and Kumkapı guesthouses, interviewees reported being able to take showers at least weekly, often with hot water. Interviewees held in Zeytinburnu reported not using the showers because the water was cold. As noted by a refugee in the Hatay Guesthouse:

*"We can take showers. The heating is solar. In the winter it was not working so the water was cold. Some people got ill because of it. I also got ill. Now it is very hot outside, so the water is warm but I want to use cold water."*

At all guesthouses except in Izmir, detainees alleged having to buy their own towels and toiletries at prices well above those outside the guesthouse. Interviewees also reported that they were responsible for cleaning their own cells, as no cleaning staff was assigned to the task. Interviewees reported that the guesthouse police sometimes provided cleaning supplies. Interviewees in Zeytinburnu and Vatan Caddesi in particular complained of how dirty the guesthouses were. They also complained of frequently suffering from insect bites and dermatological problems while in detention.

#### **4.5 Nutrition**

*They gave half a loaf of bread around ten in the morning, with olives inside or sometimes with cheese. At around four, we could have soup and rice with some vegetables. Some days they gave rice with beans with meat and bread instead. On Sunday we only got food once a day. When people first came in they got ill because of the food. If someone asked for more food the police would come and hit you. I saw this Pakistani man beaten very badly because he asked for food.<sup>139</sup>*

As discussed in Chapter 1, Section 3.5, detainees must be regularly provided with drinking water and nutritional, well-prepared food.<sup>140</sup> The 1983 Directive states that detainees should be given with three nutritious meals a day.<sup>141</sup> It also provides for a "food hall"<sup>142</sup> and canteen.<sup>143</sup>

Interviewees reported that the provision of food and water fell well below standard in all facilities surveyed. All the interviewees reported having to drink water from the bathroom taps, which occasionally made them sick.<sup>144</sup> Interviewees also reported that meals were insufficient both in terms of the amount of food served and its nutritional content. In Zeytinburnu,

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<sup>136</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Articles 12 & 13.

<sup>137</sup> *Ibid.*, Article 15.

<sup>138</sup> *Ibid.*, Article 26(b).

<sup>139</sup> A refugee in Kirklareli Gazi Osman Pasa guesthouse

<sup>140</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Article 20.

<sup>141</sup> 1983 Directive, Article 19.

<sup>142</sup> *Ibid.*, Article 18.

<sup>143</sup> *Ibid.*, Articles 18 & 21.

<sup>144</sup> Throughout Turkey, and especially in Istanbul, bottled water is consumed, since tap water is considered undrinkable.

interviewees stated that they had to do without any food at all on weekends. In Kumkapı, an interviewee reported that for most of his detention over one month, he received meals only twice a day and once a day on Sundays. Even in cases where meals were provided three times daily, interviewees reported that they were low on nutrition. Breakfast was described as generally consisting of white bread with olives or cheese; lunch and/or dinner consisted of bread and soup or a lentil casserole. None of the detainees reported having fresh vegetables or fruit and few reported having eaten meat.

Since interviewees reported that meals were insufficient, and that the few visitors allowed in were prohibited from bringing them food, most detainees reported relying on food sold by local shopkeepers at inflated prices. Detainees described that, generally, a store clerk would come to the facility, and sell food and water to detainees at twice the normal price. Thus a bottle of water sold in the Kumkapı, Zeytinburnu and Kırklareli facilities cost 3 YTL as opposed to the usual 1.5 YTL; a chicken sandwich in Zeytinburnu cost 8 YTL whereas it was sold for 4 YTL in the shop. Interviewees resented the unnecessarily high cost of the goods sold, on the basis that it was an exploitation of their already vulnerable situation.

#### **4.6 Recreation**

The provision of recreational facilities and activities, including exercise, is essential to the psycho-social and physical well-being of detainees.<sup>145</sup> The 1983 Directive is silent on the right of detainees to enjoy outdoor activities or exercise, but does state that guesthouses must have a recreation and reading room.<sup>146</sup>

Generally, however, detainees reported that no recreation or exercise was provided to guesthouse detainees. Recreational facilities and activities were only reported in the Hatay and Kırklareli guesthouses. In Hatay, detainees could spend time in the canteen area, where they could play cards and board games. As a Liberian football-playing refugee noted:

*The police let us out in the morning to go to the cafeteria. It is still inside the building, but I go running around the cafeteria.*

In Kırklareli, interviewees said they were allowed to stay in the courtyard in good weather. Similarly, an unaccompanied minor detained in a holding facility for Turkish minors in Istanbul reported having access to a television and Turkish books.

#### **4.7 Medical Services**

International standards hold that detainees be provided medical care, including mental health assistance, whenever necessary, and free of charge.<sup>147</sup> The 1983 Directive guarantees that detainees be treated by the Health and Social Services Bureau of the guesthouse, and checked into a hospital, if necessary.<sup>148</sup>

Interviewees universally complained of a lack of medical services. The barriers to receiving such treatment included: the outright denial of treatment by police; the high cost of treatment and medication; and a lack of interpreters.

##### **4.7.1 Denial of Medical Treatment and Medication**

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<sup>145</sup> Articles 21 and 40 of the UN Standard Minimum Rules for the Treatment of Prisoners, for instance, maintains that exercise and sport is necessary and that books shall be provided.

<sup>146</sup> 1983 Directive, Articles 19 & 21.

<sup>147</sup> UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24.

<sup>148</sup> 1983 Directive, Article 14(d) & (e).

*If you asked the police about being ill, they just push you away. I asked them and they said "tomorrow, tomorrow," but they wouldn't take care of me. They are not interested at all in what you have to say.<sup>149</sup>*

Interviewees reported significant police indifference to their health concerns, and in some cases, the outright refusal to respond to requests for medical assistance. They also noted that police, who generally held prescription medication, on occasion refused to distribute it, especially if the detainee had a difficult relationship with the officers on duty. The complained-of unresponsiveness or hostility on the part of the police often acted as a deterrent to detainees requesting medical assistance.

A man with a head wound at the Zeytinburnu guesthouse reported his difficulties receiving medical treatment:

*I asked the police all the time to allow me to at least see a doctor to take out the stitches and clean the wound. I had lost so much blood that I was dizzy all the time. When a doctor came to see someone in the prison, I begged the police to allow me to see the doctor. He removed the stitches, but it was very painful because they did not give me any medicine. I couldn't even lie down on a bed, as there were only 16 beds but many more people. I was lucky because somebody gave me their blanket. I had to make do with some clothes for a pillow to rest my head. It was 17 days before I could get some treatment for the wound.<sup>150</sup>*

Interviewees also reported seeing obviously sick detainees suffer without treatment for days or weeks:

*There were many people who were very ill. There were people who had several injuries, maybe with knives, or who had had operations. They couldn't move easily. The people there suffered a lot.<sup>151</sup>*

Interviewees reported experiencing the following untreated medical conditions: kidney problems, heart problems, high blood pressure, stomach pains and viruses, diarrhoea, haemorrhoids and headaches. They reported witnessing the following untreated medical conditions in others: Tuberculosis, Epilepsy, Type 1 Diabetes, gallstones and complications with pregnancy.

Clearly, the failure to promptly treat detainees with contagious diseases such as TB, or even the flu, is a significant public health problem.

In addition to being denied requested medical services, detainees reported a complete lack of mental health services. As a Congolese refugee held in the Kumkapı Guesthouse noted:

*Everybody is so depressed. One day, it is going to be too much for one of these people.*

The complained-of lack of privacy and access to contacts in the outside world led many detainees to report feelings of depression and isolation:

*I feel very demoralised. I hadn't seen anything like it before. You don't have any rights. We are very hungry and what they sell is very expensive, triple the price. The telephone cards are also very expensive. You have to speak with people that matter to you but it is too expensive. You can't get moral support.<sup>152</sup>*

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<sup>149</sup> Congolese refugee held in the Zeytinburnu Guesthouse.

<sup>150</sup> His full testimony is available at Appendix 3.

<sup>151</sup> Congolese refugee held in the Zeytinburnu Guesthouse.

<sup>152</sup> Congolese refugee held in Kumkapı Guesthouse.

All interviewees reported the harmful psychological impact of prolonged detention and some expressed that the experience of detention brought back memories of detention in previous countries.

Many interviewees remarked that they remained in perpetual fear of the police and of being arrested again. They also complained that, due to police indifference, they were too intimidated to seek psychological support. A Mauritanian refugee described the treatment of a suicidal cellmate in a facility near Izmir:

*Because of the bad situation we were in, one of us tried to kill himself by banging his head against the wall... The police attacked him and beat him in front of us until he lost consciousness. There were several gendarmes who attacked him and hit him with their sticks and kicked him. Then they carried him to a bathroom and cleaned him.*

#### 4.7.2 Cost of Treatment

*When you are ill, you have to pay for your own medicine. This is deplorable because people here are desperate, they don't have any money.<sup>153</sup>*

Interviewees also reported that cost of treatment was a prohibitive factor in accessing medical care in guesthouses. Where interviewees were able to receive medical treatment, they reported having to pay for it themselves. In cases where detainees could not afford to pay for medical treatment, they reported that their conditions generally were ignored. As an Iranian refugee held in the Zeytinburnu Guesthouse described:

*There was an Iranian lady, who was also registered with the UN. She said she suffered from gallstones. The price of the painkillers was 8.5 YTL but she was asked to pay 20 YTL. I tried to take care of her, as I had been working as a nurse in Iran... Sometimes when she complained, she was taken to Haseki Hospital and given a painkiller. I went with her one night to the hospital and the doctor told me that she needed an operation, but they took her back because she couldn't pay. This is because the operation would be very expensive. As I am a nurse, the police let me inject her with painkillers instead.*

In a few cases, interviewees did report receiving assistance to cover the costs of medical treatment. A refugee in Kırklareli with Tuberculosis reported being diagnosed and provided with medication for free. Similarly, a refugee in Kırklareli received free treatment for high blood pressure. Interviewees in the Kırklareli and Kumkapı guesthouses reported that visitors were permitted to bring medication to them to treat the flu, hemorrhoids and epilepsy.

#### 4.7.3 Language barriers

Interviewees frequently reported that language barriers prevented them from being able to communicate their medical needs to the police and medical staff. They often had to rely on other detainees who spoke a few words of Turkish to communicate their medical needs.

### **4.8 Contact with the Outside World**

*Being here is like being in quarantine.<sup>154</sup>*

Although international guidelines provide that refugees are entitled to receive visits from lawyers, advocates and relatives,<sup>155</sup> the 1983 Directive states that only officials, asylum seekers and

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<sup>153</sup> Liberian refugee in the Hatay Guesthouse.

<sup>154</sup> Congolese refugee in held in the Kumkapı Guesthouse.

refugees may enter guesthouses.<sup>156</sup> Others require permission from the MOI.<sup>157</sup> And despite the fact that refugees are entitled to communicate with the outside world by telephone, fax and electronic mail,<sup>158</sup> as discussed below, detainees reported significant barriers to in doing so.

Though interviewees in the Kırklareli and Istanbul guesthouses reported sometimes receiving visitors, they complained that the visits could not be carried out in private and were often rushed. More often, detainees reported that their visitors could drop off money, but were not permitted to see them.

In terms of communication by phone, interviewees reported that the inflated cost of phone cards,<sup>159</sup> the limited number of public phones,<sup>160</sup> and high demand for telephones meant that their phone calls were limited. It was often very difficult for callers to get through to detainees. In Kumkapı, detainees reported that they were not permitted to bring in mobile phones and the public phones were not programmed to receive calls. Only in the Kırklareli Gazi Osman Pasa and Edirne Tunca Camp guesthouses, did detainees report being allowed to keep cellular phones, and on the condition they registered their phone numbers. Interviewees explained that in these cases, friends outside the guesthouse would transfer credit to their phones or they could buy credit from the shopkeeper who visited the guesthouse.

#### **4.9 Treatment by Staff**

As noted in Chapter 1, Section 3.9, guesthouse employees are required to conduct themselves in an appropriate manner,<sup>161</sup> and are specifically prohibited from using force with detainees, except in prescribed circumstances, such as self-defense.<sup>162</sup>

Despite these requirements, all the interviewees characterized police treatment in guesthouses as “hostile,” “aggressive” or “indifferent.” In some cases, as discussed below, interviewees reported physically, emotionally and verbally abusive behavior.

All male interviewees reported witnessing or being subject to varying degrees of physical abuse by police officers. Detainees complained of being slapped, pushed or hit with a stick. They also reported regular verbal abuse. As described by a refugee held in Kırklareli:

*A policeman came to my room to call me out for food. I was suffering from hemorrhoids so badly that I couldn't walk. I told the policeman that the food is bad here and I did not want to eat. He then told me to go out the building to carry water from the well. I couldn't walk because I was in so much pain. The policeman kept shouting at me. When I went outside the policeman beat me very badly.*

A number of detainees raised significantly more severe allegations of police abuse. Notably, 10 instances of *falaqa*—the practice of beating the soles of the feet—were reported by detainees held at the Kırklareli Gazi Osman Pasa Guesthouse. In particular, they reported that two

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<sup>155</sup> UNWGAD, Annex 2, Principles 2 & 10; UNHCR Detention Guidelines, Guideline 5(v); UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 19; UN, Standard Minimum Rules for the Treatment of Prisoners, Articles 37 & 38.

<sup>156</sup> 1983 Directive, Article 32.

<sup>157</sup> *Ibid.*

<sup>158</sup> UNWGAD, Annex 2, Principle 2.

<sup>159</sup> The average cost of a 50 credit telephone card which regularly costs 4,5 YTL is 8 YTL in guesthouses.

<sup>160</sup> In guesthouses such as those in Izmir, Ankara and Hatay, interviewees reported that there is only one telephone for as many as one hundred detainees.

<sup>161</sup> UN, Standard Minimum Rules for the Treatment of Prisoners, Principle 48.

<sup>162</sup> *Ibid.*, Principle 54(1).



detainees were subject to this practice when they tried to escape in or about June 2007. Another eight reported being beaten on the feet for their alleged involvement in a large fight that broke in the facility on May 15, 2007. The fight, which is described in detail at Appendix 4, started when a local shopkeeper allegedly struck a woman who wanted free milk for her baby. After widespread fighting, police pulled aside detainees thought to have played a larger part in the disturbance. These detainees described being taken outside at night, where police beat them severely and subject them to *falaqa*. One woman described having passed out during the beatings and being taken to the hospital.

In another case, a woman described watching as a police officer in the Zeytinburnu guesthouse held her daughter threateningly over a windowsill:

*I was in the front room in the Zeytinburnu. I had my mother with me, my friend and my two children. My daughter started to cry. A policeman got angry and shouted at her. She was still crying. So he grabbed her and took her by the window. He lifted her up so that most of her body was above the windowsill. He told her that if she didn't stop he would throw her out. I was so frightened I didn't know what to do. We all froze.*

In yet another case in Kırklareli, this time in the Foreigners' Department, a detainee described the intimidating and sexually humiliating treatment he experienced during his application for temporary asylum, a full description of which is included at Appendix 5:

*The day that I went in for my interview, the policeman asked me to take off my clothes and watch a pornographic film on the police officer's laptop. They made me keep off my clothes until the film had finished. I was naked in front of the policemen and several other detainees from the center.*

*The police looked at my body, laughed at me, touched me and commented on the size of my genitalia. They said, "Let's see if he is Christian or Muslim." These comments went on for about 10-15 minutes, perhaps. After that incident, I was always afraid. When the police came to check the room I was afraid. I couldn't sleep after that day.*

## ***5 Protection of Vulnerable Refugees: Minors***

### **5.1 Procedural Standards**

International law provides that minors should only be detained as a "last resort," and for the shortest time possible.<sup>163</sup> By contrast, interviewees reported that minors were often detained unnecessarily. In one case, an Iranian family scheduled for resettlement reported being detained at Istanbul Ataturk Airport. While the father was released, the mother and her 19-year-old son reported being transferred to the Zeytinburnu Guesthouse. She explained that her 14-year-old son was sent to the minor's facility in Bakirköy, despite the fact that he could have been released to the custody of his father, who was not detained at all.

While in detention, minors should not be accommodated with adults or with others accused of or convicted of crimes.<sup>164</sup> Despite this requirement, domestic law allows for and regulates the housing of minors in adult detention facilities until their age has been confirmed in age determination procedures.<sup>165</sup> All three of the minor interviewees reported being held in guesthouses and police stations where they were accommodated with adults, both before and after being held in minors' facilities.

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<sup>163</sup> CRC, Article 37.

<sup>164</sup> UN, Minimum Rules for the Treatment of Prisoners, Articles 8 & 68.

<sup>165</sup> 2006 Circular, Section 6.

One interviewee reported being detained with her minor children. She stated that she spent four months in the Kırklareli Gazi Osman Pasa Guesthouse with her three minor children. Her two sons, aged 14 and 16, were reportedly held with male adults, but she stated that she was able to visit them during the day. Her nine-year old daughter stayed with her in the women's section of the facility.

Many other interviewees observed unaccompanied minors detained with adults in centers such as the Izmir Foreigners' Department, Kırklareli Gazi Osman Pasa Guesthouse, Edirne Tunca Camp and all the Istanbul detention facilities. Detainees reported seeing many babies and pre-pubescent children in detention in the Kırklareli Gazi Osman Pasa Guesthouse. As described by a Congolese refugee held in a guesthouse in Izmir:

*What struck me there was that minors and adults were held together. The parents and children stayed together. The children didn't sleep. There was so much smoke and it was cold so we had to close the windows. The smoke made me cough so much; it must have been even harder for the children. We were meant to sleep but there was little time to sleep because of the children crying. You fell asleep about five in the morning only to be woken up a couple of hours later.*

In the context of age determination procedures, international standards provide that margins of error should be applied to medical tests, psychological tests should be undertaken to evaluate the maturity of minor applicants, and the benefit of the doubt should weigh in favor of the asylum applicant.<sup>166</sup> Two of the minor interviewees described being administered x-ray bone tests. They indicated that they were not given any explanation about the procedure or informed why the tests were being taken. Neither reported being interviewed to determine their psychological maturity level. Following the bone tests, both reported being returned to adult detention facilities.

## **5.2 Conditions in Minors' Detention Facilities**

The minors interviewed reported being held in centers designated for Turkish minors, including the Hasköy, Üsküdar and Taksim Minors' Police Bureau. All three facilities house criminal delinquents.

Taksim Minors' Police Bureau was shut in late 2006. The interviewee who was detained there maintained that he was not given sufficient food, that the facility was not clean, and that the police were aggressive. He was especially concerned about the treatment of the young Turkish children, whom he claimed were regularly beaten.

By contrast, a minor held in the Üsküdar detention facility said that the police were friendly. He also stated that there was an area for recreation with a television, that he had a clean bed and was able to wash.

The minor detained in Hasköy for a month complained there were only two beds. He described that when one of the beds was soiled by another minor, all the other detainees competed for the remaining bed. He also complained that he was not served sufficient amounts of food, as the police expected that the parents bring them food.

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<sup>166</sup> UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, Article 5.11, February 1997, UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3360>.

## STANDARDS, PRACTICE & RECOMMENDATIONS

PROCEDURAL RIGHTS		
DETENTION OF REFUGEES		
International Standard	Domestic Standard	Reported Practice
Refugees should not be detained. If necessary, detention should not be automatic or unduly prolonged. Detention of refugees should only take place: to verify identity; to determine the elements on which the claim for refugee status is based; where refugees have destroyed their documents or have used fraudulent documents to mislead authorities; or to protect national security and public order.	Refugees may be detained in guesthouses: if charged with illegal entry or exit; until the correct visa and travel documents have been obtained to travel to the country of destination; until permission is obtained from MOI to reside in the detainee's "satellite city"; when the city of temporary residence is left without permission; pending a decision from MOI on a violation of Turkish law.	Those who apply for asylum while in detention are regularly detained for the duration of their temporary asylum application procedure.
<p><b>Recommendation</b> - Refugees should not be detained unless it is unavoidable. Asylum applications should be processed without unnecessarily curtailing refugees' freedom of movement. Where detention is unavoidable, refugees should be informed of and accorded all procedural rights, and conditions of detention should comply with domestic and international standards. A refugee's presence without documentation, including at entry and exit points, should not prejudice his or her credibility during the asylum application procedure.</p>		

RIGHT TO ACCESS ASYLUM PROCEDURES		
International Standard	Domestic Standard	Reported Practice
Everyone has the right to apply for asylum. Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.	Foreign nationals who enter Turkey may apply for asylum. Asylum applications will not be prejudiced so as long as the applicant approaches the police for registration in the shortest time possible after entering the country, and can account for any delay.	Detained refugees face barriers to applying for asylum, including a lack of information about asylum procedures and refusal by police to take asylum applications. Those held in airport transit zones are barred from applying for asylum. Inability to access asylum procedures has led to instances of <i>refoulement</i> .
<p><b>Recommendation</b> - Providing foreign nationals with information about domestic asylum procedures is essential in allowing people to exercise their rights. Detained foreign nationals should immediately be provided with information, in a language they understand, regarding how to apply for asylum. All applications for asylum, whether oral or written, should be taken immediately. Trained, experienced interpreters should be available to assist in this regard. Police at guesthouses, police stations and other detention facilities should be trained on the asylum procedure and informed of their obligation to accept and process the applications of detainees. Foreign nationals detained in airport transit zones should not be prohibited from applying for asylum and should be accorded the same rights as other foreign nationals in Turkey applying for asylum.</p>		

<b>COMMUNICATION OF REASONS FOR AND LENGTH OF DETENTION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Authorities must provide prompt and full communication of any order of detention, in writing, in a language understood by the detained refugee. The reasons for the order, information about the length of the order, and any associated rights should also be communicated.	N/A	None of the interviewees were informed of the reasons for their arrest, the expected length of detention or rights in detention. Many faced indifference or aggression from the police when they asked for this information.
<b>Recommendation</b> - Upon arrest, authorities should immediately inform arrestees of the reasons for and expected length of detention in a language understood by the arrestee. Trained, experienced interpreters should be available and utilized whenever necessary to communicate the reasons for and expected length of detention.		

<b>RIGHT TO JUDICIAL REVIEW</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Refugees in detention have the right to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.	Administrative detainees have the right to a speedy conclusion of their case; they may apply to a judicial body to challenge the lawfulness of the detention; and should be released if the detention is found to be unlawful.	Since refugees held in guesthouses are not informed of the reasons for detention, have no substantial access to legal counsel and are rarely informed of the status of their asylum applications, they cannot determine whether proceedings are carried out with "due diligence," or whether the length of detention is "excessive." As a result, they have no practical recourse to challenge the legality or the length of their detention.
<b>Recommendation</b> - A system of judicial review should be established allowing refugees to challenge the reasons for and length of detention, and allow them to be released if the detention is found unlawful. Refugees should be provided with free legal aid to carry out judicial review. Authorities should provide refugees with the reasons for detention, as well as regularly provide them with information about the status of their asylum claims in order to allow them to determine if the procedures are being carried out with due diligence.		

<b>RIGHT TO LEGAL COUNSEL</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Refugees in detention have the right to retain legal counsel, communicate with other agencies and advocates, and should be notified of this right upon being detained. They also should be provided with adequate time and privacy during visits from lawyers and advocates.	N/A	Detained refugees have only very sporadic access to lawyers and are not able to receive visits from other NGOs or advocates at all. Refugees held in airport transit zones in Turkey have no access at all to lawyers, the UNHCR or other agencies or advocates.
<b>Recommendation</b> - Authorities should inform guesthouse detainees, as well as those in police stations and in airport transit zones wishing to seek asylum, of their right to retain legal counsel, and communicate with other agencies and advocates. Authorities should universally allow legal counsel and advocates access to guesthouses, police stations and airport transit zones to meet clients, and provide sufficient privacy and time for meetings.		

<b>LENGTH OF DETENTION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
The detention of refugees should be limited. If procedures implemented during a refugee's detention are not carried out with "due diligence," the detention will be considered "excessive."	A refugee's stay in a guesthouse should be temporary.	Those who apply for asylum while in detention tend to be detained for longer periods (usually more than six months) than those who have applied beforehand (averaging one to three months).
<b>Recommendation</b> - If the detention of a refugee proves to be unavoidable, his or her length of time in detention should be as limited as possible. All procedures, including asylum applications, should be processed with due diligence. Detainees wishing to seek asylum for the first time while in detention should not be automatically detained for the duration of their asylum applications.		

<b>CONDITIONS</b>		
<b>SEGREGATION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Different categories of detainees must be accommodated in separate areas of detention facilities, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Refugees should not be held with those accused of or convicted of crimes (unless so charged or convicted themselves).	N/A	Adults and minors, convicted criminals and non-criminals, are regularly housed in the same areas. Only men and women are segregated.

**Recommendation** - Detainees should be segregated not only by gender, but also by taking into account age, criminal record, the legal reason for detention, and any special needs. In particular, refugees should not be held together with those accused of or convicted of crimes. Unaccompanied minors should not be held in the same facilities as adults. Refugee children should not be separated from opposite sex parents or guardians. Sick or disabled detainees should be held in separate areas.

<b>SLEEPING ACCOMMODATION AND BEDDING</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detainees have the right to have their own beds, with sufficient, clean bedding. Sleeping areas must be clean, well-ventilated, well-lit, appropriately heated, and have enough floor space to accommodate the numbers of people detained.	N/A	Overcrowding is common, often leading detainees to sleep on the floor with inadequate bedding.
<p><b>Recommendation</b> - Authorities should allocate necessary resources to ensure the availability of sufficient numbers of beds and clean bedding for every detainee. Where sufficient floor space to accommodate all detainees is unavailable, excess numbers of detainees should be housed in other rooms or facilities. Sleeping areas should be regularly cleaned and exterminated by facility cleaning staff.</p>		

<b>LIGHT AND VENTILATION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Facilities must provide detainees sufficient amounts of fresh air and ventilation, and enough natural and artificial light to read and work.	N/A	Facilities have windows, but are cold in winter and hot in summer. Overcrowding exacerbates poor ventilation, especially where smoking is permitted.
<p><b>Recommendation</b> - Detention facilities should provide sufficient levels of ventilation. Overcrowding should be avoided. Excess numbers of detainees should be housed in other rooms or facilities.</p>		

<b>HYGIENE AND SANITATION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
General standards of hygiene and cleanliness must be maintained throughout the facility. Detainees must be provided with clean toilets and showers, allowing them to shower frequently enough to maintain personal hygiene, and at appropriate temperatures. They also should be provided with water and any toilet articles necessary to maintain health and cleanliness.	N/A	Bathrooms and sleeping areas tend to be dirty and insect-infested. While guesthouses generally provide showers, hot water is not always available. Detainees regularly have to pay for their own toiletries and towels at inflated prices. Some must buy cleaning supplies to clean living areas.

**Recommendation** - Detention facilities, including kitchens, bathrooms and showers, should be regularly cleaned and maintained to ensure appropriate standards of hygiene and cleanliness. Hot water should be regularly available. Detainees should be provided with toilet articles for free. Water for cleaning should be regularly available. Laundry facilities and free detergent should be provided and accessible.

<b>NUTRITION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detainees must be regularly provided with drinking water and food of nutritional value, adequate for health and strength, of wholesome quality that is well-prepared and served.	Detainees should be given three meals a day, which, based on advice from a doctor, should provide them with sufficient calories.	Meals are lacking in nutritional and caloric value. Some facilities do not serve food on the weekend. Safe drinking water is not freely available. Detainees who can afford to do so, are forced to get food delivered—at highly inflated prices—from local shopkeepers.
<b>Recommendation</b> - Detainees should be provided with unlimited, free drinking water. Meals should be provided three times per day, and should be served in sufficient amounts and with sufficient nutritional value. Food delivered by local shops should be sold at the same price as that sold outside the detention facility.		

<b>RECREATION</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detainees should receive one hour of exercise per day, outside whenever possible. Space and equipment should be available in detention facilities for recreational training. A library should be appropriately stocked and detainees should be encouraged to use it.	Guesthouses must have recreation and reading rooms.	Generally, no exercise or recreation is available to detainees. Books are unavailable.
<b>Recommendation</b> - Detainees should have access to the outside and/or exercise at least one hour each day. Recreational equipment and books should be made available.		

<b>MEDICAL SERVICES</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detainees must be provided medical care—including mental health assistance—whenever necessary, and free of charge. Facilities must employ a medical officer to evaluate and treat detainees' medical and mental health needs, and report on conditions within the facility.	Detainees with health or mental health problems are to be monitored and treated by the Health and Social Services Bureau of the guesthouse. Those in need of further medical attention are to be checked into a hospital.	Medical services in guesthouses are universally inadequate. Barriers to receiving medical and mental health treatment include the outright denial of services by police, the high cost of treatment and medication, and a lack of available interpreters. Prolonged detention in poor conditions lead to feelings of depression and isolation.

**Recommendation** - Doctors and mental health professionals, along with trained, experienced interpreters, should make regular rounds in detention facilities. Diagnosis, treatment and medication should be provided for free. Detainees with serious health problems should be immediately diagnosed and checked into a hospital. Police and other facility staff should be trained to identify detainees in need of medical attention.

<b>CONTACT WITH THE OUTSIDE WORLD</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detained refugees are entitled to receive visits from lawyers and advocates, the UNHCR, the International Red Cross, duly authorized NGOs, consular representatives and relatives. Detainees must be able to communicate with the outside world, including by telephone, fax or e-mail.	Only officials, asylum seekers and refugees may enter guesthouses. Other visitors must obtain permission from the Ministry of Interior to visit detainees.	Outside communication is limited due to the high cost of using telephones, the general inability to receive calls, a lack of privacy, and minimal access to visitors.
<b>Recommendation</b> - Detainees should be allowed to receive visits from lawyers, advocates, NGO representatives, consular representatives, family and friends. Sufficient time and privacy should be provided to detainees and their visitors. Detainees should be able to make calls for free to legal representatives or advocates.		

<b>TREATMENT BY STAFF</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Detention facility employees are required to conduct themselves in an appropriate manner, and are specifically prohibited from using force with detainees, except in prescribed circumstances, such as self-defense.	N/A	Detainees witness or are subject to varying degrees of verbal and physical abuse by police officers. Police officers are generally indifferent to refugees; at worst, they engage in unjustified physical violence.
<b>Recommendation</b> - Better communication between staff and detainees should be facilitated through the use of trained, experienced interpreters in relevant languages. Force should never be used with detainees, unless for prescribed reasons, such as self-defense. An appropriate complaint mechanism should be established regarding treatment by staff. All detainees should be informed of the procedure upon their admittance into the facility.		



<b>PROTECTION OF MINORS</b>		
<b>International Standard</b>	<b>Domestic Standard</b>	<b>Reported Practice</b>
Minors should only be detained as a "last resort," and for the shortest time possible. Minors should not be accommodated with adults or with others accused of or convicted of crimes. Minor refugees should not be detained at all. Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection. In the context of age determination procedures: margins of error should be applied to scientific procedures; psychological maturity as well as physical appearance should be taken into account; the benefit of the doubt should weigh in favor of the asylum applicant.	Unaccompanied minor applications for temporary asylum must be processed in an expedited manner so that they can be turned over to accommodation centres run by national child services as quickly as possible. Minors should be held in adult guesthouses until their age has been confirmed in age determination procedures. Medical tests should be used for determining the age of minors if the minor does not have documentary proof of his or her age, or the police have doubts about the age stated in such documentation.	Unaccompanied minors are regularly detained in adult guesthouses until their age has been confirmed and they can be sent to detention facilities for minors. Age determination procedures do not account for margins of error or the psychological maturity of the applicant, and do not provide the minor the benefit of the doubt regarding his or her age.
<p><b>Recommendation</b> - Unaccompanied minors should not be detained. Where no other option is available, detention should be for the shortest period possible. In administering age determination procedures, MOI should apply a margin of error, should assess the psychological maturity of the minor and should extend the minor the benefit of the doubt regarding his or her age. Asylum applicants should not be held with adults while awaiting the results of age determination tests. The asylum applications of minors should be processed in an expedited manner. Special care should be extended to unaccompanied minor asylum seekers. Specially trained staff should facilitate minors' asylum applications.</p>		

## APPENDICES

### *APPENDIX 1 : Detention Questionnaire*

Date:

Interviewer:

Location of interview:

Name:

Gender:

UNHCR's / hCa's file number (if hCa client):

Country of origin:

Telephone:

Date of arrest:

Date of release:

Conditions of arrest (house raid, in the street, other):

Place of detention:

Transportation to and in between detention centers:

Date of previous detentions:

Status (registered as an asylum seeker, registered with the police...):

Court:

#### **Conditions in the Detention Center**

1. Could you please try to describe the place of confinement with as many details as possible?
2. Please describe the nature of the confinement: individual or communal spaces? Were they overcrowded spaces?
3. What size were the areas of the confinement? How many individuals shared the same space?
4. What were the sleeping conditions in the areas of the confinement like? Did you have beds? Mattresses? Blankets?
5. How many hours per day do detainees spend in confinement?
6. How long did the detainees stay in the facility?
7. Hygiene and sanitation facilities
  - Did you have access to clean water? Yes / No
  - Were you able to have showers? Yes / No
  - How often?
  - Did you have hot water? Yes / No
  - Soap? Yes / No
  - Were you able to have hot shower in a private place? Yes / No
  - Were you allowed to use toilets? Yes / No
  - Was it a private space? Yes / No

Was the area of confinement clean (dirt, bugs.)?

Did you have any problems caused by the lack of hygiene in the place (body/ skin diseases)?

We can take showers

8. Did you have any clothes? Did you ask for clothes? Which reply did you get?
9. For women: Were you give any sanitary towels or other provisions for hygiene?
10. Did you have access to light (windows, electric light)/heating/ ventilation in the areas of confinement? Were there any restrictions on access? Were the lights switched off at night?
11. Were meals and drinking water provided to you? If yes, could you describe the quality, quantity and variety of food given and how often meals were provided?
12. Did you have access to any social and/or recreational activities?
13. Were you and other detainees able to practice your religions? If so, in which conditions?

### **Information Given During the Detention**

14. Were you told about the reasons of your detention? Were you told how long you would be in detention for?
15. When you were arrested were you told of your rights? e.g., to seek medical attention, to place an asylum claim...
16. Were you given the reasons for your release?
17. Were you returned your possessions (money, telephone etc) when you left the detention center?

### **Interaction with the Police**

18. Could you describe the behaviour of the police toward you?
19. Did you experience any mistreatment (psychological or physical)? If yes, could you describe it? Did you witness any mistreatment on other detainees? Did you hear anything about mistreatments on detainees? Did you see anything that made you think that made you suspect mistreatment or abuse?
20. Did you complain to the police about the problems that you were having (medical, psychological...)? If so, which reply did you get?
21. Were there any instruments of restraint applied to detainees (handcuffs...)? In which circumstances were they used?
22. Were there detainees kept in solitary confinement? In what circumstances would it happen? How long would detainees be kept in solitary confinement?
23. Have you observed or been informed of detainees bribing officials? If yes, what for?

### **Health**

24. Did you have any health problems? Did you ask for medical care (doctor/ medicine/ hospital) and did you have access to it? Did other detainees have health problems? Did they have access to medical care?
25. Describe the treatment you received from the medical staff. What medical procedures did you have done? Did you have translators? Were your diagnosis, medical treatment and examination explained to you? Was the treatment you received adequate?

### **Visits**

26. Were you able to inform or have the police inform on your behalf a relative or a friend of your detention?
27. Did you have access to telephone? Were you able to receive phone calls?
28. Were you able to send or receive any mail?
29. Were able to receive visitors? Were you given privacy? How long did your visits last?
30. Do you know of anyone who tried to access you but could not?

#### **Differential Treatment of the Detainees**

31. Were detainees separated according to:  
Gender: Yes / No  
Age: Yes / No  
Crime (civil and criminal detainees): Yes / No  
Category of crime (high risk and petty crime): Yes / No  
Status (convicted and awaiting trial): Yes / No  
Other distinction: Yes / No
32. Was there any discrimination of detainees on basis of ethnicity, religion, sexual orientation, political opinion or other grounds?
33. Were vulnerable people such as women, children, elderly people, disabled people, or mentally unstable detainees, given special care?

#### **Asylum Application**

34. Did you ask to make an asylum claim?
35. If so, how long did it take to lodge this asylum claim?
36. What did you do to make this asylum claim (wrote a letter, visit from UNHCR)?

#### **Social Relations in the Detention Center**

37. Where were the other detainees from? Were they asylum seekers?
38. What kind of relation did you have with the other detainees? And what kind of relation did detainees have with each other?

#### **Interviewee's Perspective**

39. Would you like to talk about how this experience has affected you?
40. Would you like to add anything?

## *APPENDIX 2: Detention in Istanbul Ataturk Airport<sup>167</sup>*

A Nigerian refugee traveling with false documentation from Nigeria to the United Kingdom was detained in the Istanbul Ataturk Airport during a stop over. He informed the police both orally and in writing that he wanted to apply for asylum on the basis of his membership in a political group. If returned to Nigeria, he said, he would face torture and death. The police refused to accept his application for asylum.

The Nigerian refugee (Mr. A) reported to hCa on the telephone that he experienced the following treatment during attempts by Turkish police to deport him:

- Mr. A reported making multiple requests to speak with the UNHCR, all of which were denied by the police. As police attempted to board him on a plane to Nigeria, Mr. A began screaming and went limp. The police were unable to force him on the plane, at which point, they dragged him into a bathroom, handcuffed him and threw him onto the ground. In order to stop Mr. A from crying and screaming, the police officers slapped him and then gagged him, to the point he reported feeling that he could not breathe. He described that the police officers took turns standing on his head with their boots. Police officers tightened his handcuffs, which caused his hands to swell from a lack of blood circulation. After approximately 20 minutes, Mr. A was taken back to the airport transit zone detention center.
- Two days later, police again attempted to force Mr. A on a flight back to Nigeria. He reported repeatedly asking to speak with the police chief at the airport about his request to seek asylum. He was denied the opportunity speak with the chief or apply for asylum. Mr. A reported that he refused to board the plane and began to scream and cry. He again informed the police officers that he wanted to speak with a UNHCR representative and that he would not board the plane until he was allowed to do so. Police officers were unable to force him on to the plane and he was taken to a small room in the airport transit zone. Mr. A reported that while in that room, police officers kicked and hit him several times. He claimed that he was then placed in a "helicopter"-like position: his hands and feet were handcuffed behind him. Mr. A was left alone in this position for two hours. Police officers then released him from this position and he was returned to the detention center waiting room.

Despite attempts by hCa to halt the detention by contacting UNHCR, and making an application to the European Court of Human Rights, Mr. A was shortly thereafter deported to Nigeria. His whereabouts are currently unknown.

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<sup>167</sup> Mr A. has called hCa-RASP office for help on December 21, 2006. He was deported on December 24.

### *APPENDIX 3: Medical Treatment at Zeytinburnu Guesthouse<sup>168</sup>*

A Syrian refugee described being refused medical treatment by the police in the Zeytinburnu Guesthouse for a severe head wound:

*When we were at home, some Turkish men with guns stormed our house. They were from a gang. A fight broke out and we began to defend ourselves. Somebody hit me on the head. I began to bleed very heavily. After the Turkish people left, my friend took me to the hospital. We had to collect money from people around us to go there. When I got to the hospital, we realized that the Turkish men were following us. They came into the hospital and start causing problems. I called the police. In the meantime, though, I managed to get some stitches.*

*By the time the police got to the hospital, the men had gone. The police at the local station questioned us. They took me into the hospital again because I was still throwing up. I had an x-ray taken but they never gave me the results.*

*The police transferred us to the Zeytinburnu Guesthouse the next day (because we didn't have a residence permit). I did not get to see a doctor about the wound or get any medicine for the pain. I asked the police all the time to allow me to at least see a doctor to take out the stitches and clean the wound. I had lost so much blood that I was dizzy all the time. When a doctor came to see someone in the prison, I begged the police to allow me to see the doctor. He removed the stitches, but it was very painful because they did not give me any medicine. I couldn't even lie down on a bed, as there were only 16 beds but tens more people. I was lucky because somebody gave me their blanket. I had to make do with some clothes for a pillow to rest my head. It was 17 days before I could get some treatment for the wound.*

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<sup>168</sup> The interviewee stated that he was arrested on August 8, 2007.

#### ***APPENDIX 4: Mistreatment at Kırklareli Gazi Osman Pasa Guesthouse***

On May 15, 2007, detainees of the Kırklareli Gazi Osman Pasa guesthouse report that following wide-spread fighting, police officers severely beat eight detainees who were allegedly involved in the fight. In particular, the detainees reported *falaqa* – the practice of beating the soles of the feet. What follows is a summary of events, based on interviews, held on May 16, 2007, with three Somali men and five Somali women who witnessed the events, as well as key excerpts from their interviews.

##### ***Factual Summary***

Fighting between the detainees and the police broke out at approximately 3:00 pm in the afternoon when detainees were out in the yard of the guesthouse. A pregnant Somali woman had asked a visiting shop assistant for free milk. The shop assistant insulted her and slapped her. Two on-looking police officers reportedly did not intervene, so some male detainees standing near the assistant and the woman stepped in to help her. A commotion broke out. Approximately 12 armed policemen with dogs began shooting in the air and at the detainees. No one was shot. People started running away. Soon thereafter, reinforcements arrived, consisting of gendarmes, additional police officers and what appeared to be plain-clothed police officers. Detainees reported seeing police armed with: guns, stun-guns, batons, iron bars and gas canisters. Some people ran inside the guesthouse (the gates to the building were open) and set fire to blankets. Within an hour, the fighting had subsided and the police had taken control. The police separated the men and women and started to question people in small groups to find out who was responsible for the fighting.

The detainees claimed that nearly all people held in the guesthouse, including vulnerable detainees, such as pregnant women, children and the sick, were hit and sprayed, and that 25 people were badly hurt. One detainee, for instance, described the condition of his friend who had a wound from his face to the back of his skull caused by a blow to the head (see testimony of Detainee 1). Another reported that she was beaten when lying in her bed, resting because of chronic and severe health problems (including frequent bouts of fainting).

Detainees reported that at 7:00 pm or later, after the police stopped questioning detainees, six men and two women were driven in a police car to a dark area behind the camp. They reported that the police punched them, kicked them and hit them with batons. Most notably, the detainees reported that they were subject to *falaqa* (see Testimonies 1, 2 and 3). One of the women reported that she passed out during the beating and was taken to a hospital where she received no treatment (see testimony 3).

##### ***Detainees' Testimonies***

**Detainee 1:** A Somali man, accompanied during the interview by a detainee who was subjected to *falaqa*, described the events that broke out that day as follows:

*The events started about 3:00 in the afternoon. A Somali woman asked the shopkeeper for milk. She had no money, she asked the shop keeper for milk. The man verbally abused her and insulted her and he said something about her being African. There was a communication problem between them. He then slapped her. Two policemen were standing by her and the shopkeeper. The police didn't react. When we saw the man slapping the woman we also tried to defend the woman. We were all outside getting fresh air at the time so we all saw him.*

*There were 12 policemen at first. The police opened fire. Sometimes aiming at us sometimes shooting up. They were firing a lot [...] We started to throw stones at the police. No one was shot but it looked like they were trying to fire at us. They were using their dogs against us as well. [...] Then, afterwards, they called for more assistance. So the gendarmes came as well as the plain clothed policemen. Those who came later had batons and iron bars with them. Some had stun-guns with them.*

*Some of the women who couldn't run fell to the ground. When we tried to run from the police and dogs, the police came and hit the women hard. There was a man who was trying to help a woman who fell. The police saw that man and hit him on the head. He had a wound on his head. He has a wound from his left eye up to the back of his head.*

*Some people were in the cells. The gates were open [so they were able to get into their cells]. They burnt their blankets.*

*More policemen came. There were around 300 or more. The whole incident lasted from 3:00 in the afternoon up to 7:00 in the evening. The fighting stopped at about 4:00. They were beating us and threatening us until 7:00. The police kept coming to see who had organized it, who had set fire to the blankets and so on. They were taking three to four of us at a time.*

*Before we went back to our cells we were sitting under the trees and they took six men from under the trees. Those people told me that police took them [six men and two women] to a dark place where there is no camera where nobody can see. They were abusing them and insulting them loudly. They beat them on the feet. It was falaqa. Now some of them can't even walk to go to the bathroom.*

*We are still threatened. They keep taking four of us at a time to interview. The interviews are about who is behind the whole incident. [...] The one man who is in very serious condition, they didn't even give him painkillers.*

**Detainee 2:** The detainee who accompanied Detainee 1 described the events as follows:

*My two friends have told you the story. I don't have anything different to say. I am very tired. I can't speak.*

*We were playing football. I saw the woman being slapped by the shopkeeper. And the police were also nearby.*

*When the fighting stopped all the men were separated from the women. They took us to a different part. The eight of us were driven to another place, behind the camp where there is no light. They beat us and then a person came and gave them orders to beat us more. I was beaten all over my body. They were six policemen. I know their faces well. They were beating us with their boots, sticks and fists. They beat me under the feet, on the kidney and the head. My knees hurt the most.*

**Detainee 3:** A female detainee who claimed to be subject to falaqa:

*I was on my bed; they dragged me by my hair. [...] They dragged me outside. I am one those people who was beaten very hard. I have pain in my body and my face. They hit me on the face, the back, they also punched me on the kidney. They hit me under the feet. They took me to a hospital after I passed out when they beat me. I was not given any painkillers. They have been threatening me, telling me that they will kill me. I am afraid the police will come and beat me again.*

**Detainee 4:** The account of a pregnant woman who got caught in the fighting:

*We were all beaten yesterday. We had gas sprayed our eyes, even the children. There were other women who are pregnant [...] There was a man who the police was beating. He ran away from the police, took a hold of me and the police hit me as well. They hit me with their stick. We were not allowed to go to the hospital.*



## APPENDIX 5: *Asylum Application Interviews at Kırklareli Foreigners' Department*<sup>169</sup>

Two detainees held at Kırklareli Foreigner's Department describe treatment during their applications for temporary asylum:

### Detainee 1

*The police called me early in the morning out of my cell to interview me at the police station. The first day they made me sit against the wall without leaning on it until 6 in the evening. They kept coming to me saying that if I agreed to sign a paper to go to my country, I could leave. I refused. They took my fingerprints later on and let me go. They also slapped me but it didn't hurt. I did not get any food there and was not allowed to use the bathroom the whole day.*

*The second day I had my interview, with my friend translating. The interview took place in the room of a police officer. The police asked many questions and I refused to reply to them. I did not trust them. They kept asking me if I wanted to go back home. The police then began shouting at me. They said they wouldn't let me go back to my country and I would stay for another 4 or 5 years in prison. During the interview, they kept touching me and calling me a Christian. They called out racial slur, but I didn't understand everything.*

*The police officer was playing a pornographic film on his laptop. The police were asking me: "Do you ever do this?" pointing at the film. In the film when they were dancing. They asked me to dance or to do whatever they were doing on the movie. I didn't do what they asked me to do. They let us go back to the cell at 4 in the afternoon.*

*The following day they brought me back to the police station. I was starving by then, as I had only eaten the previous day. I was again made to sit without touching the wall. There was a vending machine next to me so I leaned on the machine. A policeman saw this and shouted at me but did not hurt me. Again they didn't let me use the toilet or drink any water. When they took us back I was begging the police to allow me to use the bathroom but I couldn't until we were back in the cell. On this day, I was in the same room as my friend (Detainee 2) when they made him take his clothes off and watch another pornographic film. My friend even had to take his underwear off.*

### Detainee 2

*They drove me to the center with different people every day to translate. The police made us sit against the wall without touching the wall. I didn't get any water or food. I went to translate for two days.*

*The day that I went in for my interview, the policeman asked me to take off my clothes and watch a pornographic film on the police officer's laptop. They made me take off my clothes until the film had finished. I was naked in front of the policemen and several other detainees from the center. The police looked at my body, laughed at me, touched me and commented on the size of my genitalia. They said, "let's see if he is Christian or Muslim." These comments went on for about 10-15 minutes, perhaps. After that incident, I was always afraid. When the police came to check the room I was afraid. I couldn't sleep after that day.*

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<sup>169</sup> According to the interviewees, the incidents took place between 16-18 January, 2007



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DERNEĐİ

Helsinki Yurttatőlar DerneĐi: Tomtom Mah. Kumbaracı Yokuőu 50/3 BeyoĐlu 34433 İstanbul;  
T: (0212) 292 68 42 F: (212) 292 68 44 info@hyd.org.tr

hYd – Mülteci Savunuculuk & Destek Programı: Tomtom Mah. Kumbaracı Yokuőu 50/3 A,  
BeyoĐlu 34433 İstanbul; T: (0212) 292 48 30 F: (212) 292 48 33 refugeead@hyd.org.tr  
www.hyd.org.tr