



## TÜRKİYE

JOINT SUBMISSION TO THE UN COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

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ISSUES RELATED TO IMMIGRATION DETENTION

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*Joint submission from:*

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## **ABOUT THE INTERNATIONAL REFUGEE RIGHTS ASSOCIATION (IRRA)**

The International Refugee Rights Association (IRRA) was established in 2013 by legal practitioners following a mass influx of refugees into Türkiye, with the aim of defending their legal rights and promoting legal regulations and their implementation in line with international standards. The IRRA's mission is:

- To be a pioneer in refugee legal aid provision and right-based advocacy in line with international standards through its dedicated team of lawyers across Türkiye;
- To prevent violations of the right to live and promote the prohibition of torture within the scope of international human rights law, especially in immigration detention and deportation cases;
- To raise public awareness and knowledge about the global situation of refugees as well as their plight in Türkiye through activities, training, and media including television, newspapers, and social media;
- To document and report on the condition and challenges faced by refugees inside and outside camps both in Türkiye and abroad.

## **ABOUT THE GLOBAL DETENTION PROJECT**

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

# Türkiye

## Joint Submission to the UN Committee on the Protection of the Rights of All Migrant Workers

### 35<sup>th</sup> Session, September 2022 - List of Issues Prior to Reporting

#### Issues Related to Immigration Detention

The International Refugee Rights Association (IRRA) and the Global Detention Project (GDP) welcome the opportunity to provide information relevant to the list of issues prior to the second periodic review of Türkiye with respect to the implementation of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families during its thirty-fifth session. This submission focuses on the state party's laws and practices concerning detention for immigration-related reasons and is made in light of the CMW's recent authoritative General Comment No. 5 on migrants' rights to liberty and freedom from arbitrary detention.<sup>1</sup>

#### 1. INTRODUCTION: MIGRATION-RELATED DETENTION & ENFORCEMENT IN TÜRKIYE

- 1.1. According to UNHCR, Türkiye currently hosts four million refugees and for the last seven years, has hosted the largest number of refugees worldwide. At the end of 2020 there were 3.6 million Syrians granted temporary protection in Türkiye and 322,000 refugees and asylum seekers of other nationalities, mainly from Iraq, Afghanistan, and Iran.<sup>2</sup>
- 1.2. Türkiye has one of the world's largest immigration detention systems, which is comprised of "removal centres," ad hoc detention sites along its borders, transit facilities in airports, and police stations in 27 different locations, three of which are in Istanbul.<sup>3</sup>
- 1.3. Turkish law specifies that decisions to hold foreigners under administrative detention must be based on specific criteria, including conditions of necessity and the possibility of deportation. An administrative detention decision can last for up to one year (six initial months plus a maximum of six additional months). However, once released after one year, many migrants are re-detained creating a loophole in the execution of these limits.
- 1.4. After the arrest of irregular migrants by law enforcement agencies, their fingerprints and photographs are recorded in a common database shared by the General Directorate of Security, the Gendarmerie General Command, the Coast Guard Command, and the Directorate of Migration Management. Foreign nationals who are brought to a removal centre are interviewed to determine their identity and nationality and whether they have travel documents. Once the relevant legal process is completed, deportation procedures are carried out if deemed appropriate. However, in some cases it is not possible to deport detainees because Türkiye lacks removal agreements with the relevant country.
- 1.5. The number of people held in immigration detention in Türkiye has risen dramatically in recent years: from 1,750 in 2015 to 20,000 people as of May 2022. 320,172 foreigners have been deported from Türkiye since 2016. Although deportations dropped during the COVID-19 pandemic, since 2021 return rates have risen again, with a 74 percent increase in deportations in 2021 compared to the previous year.<sup>4</sup>
- 1.6. Turkish law (Law 6458 on Foreigners and International Protection (LFIP) (2013) Articles 57 and 71) provides for consideration of non-custodial measures as part of immigration adjudication procedures, which can include residence at a designated address and

reporting requirements. However, observers contend that these measures are not widely used.<sup>5</sup>

- 1.7. The Turkish government did not delay or stop issuing administrative detention orders during the COVID-19 pandemic, and regular reporting to the Provincial Directorate of Migration Management as an “alternative to detention” was suspended. Although the Turkish Parliament passed a law in April 2020 allowing for the release of up to 100,000 prisoners from Turkish jails in response to the pandemic,<sup>6</sup> no migrants or asylum seekers were released from administrative detention during this time. Although immigration removals were halted between 18 March and 15 June 2020, removal decisions continued to be issued during this time.<sup>7</sup>
- 1.8. While some migration-related detainees were transferred to less crowded detention centres to facilitate social distancing, in general no other measures were taken to effectively prevent the spread of COVID-19 amongst immigration detainees or to provide adequate care to those who fell ill; there was no obligatory quarantine on release from immigration detention; and migrants and asylum seekers were not routinely tested for the virus.<sup>8</sup>

## 2. HISTORICAL CONTEXT

- 2.1. Türkiye’s immigration and asylum policies have been shaped by numerous factors related to its geography, history, and politics. Its relationship with the European Union (EU) has been particularly crucial because of its strategic location between the EU and the Middle East and other parts of the world.
- 2.2. Türkiye did not establish a comprehensive migration policy until the 2000s. The large-scale refugee movements which followed the Arab revolts in 2011 prompted Türkiye to further institutionalise migration and asylum policies, including by adopting Law 6458 on Foreigners and International Protection (LFIP) in 2013. As well as taking into account general “EU acquis” in the preparation of the new law, authorities also tried to ensure that it was in compliance with decisions made by the European Court on Human Rights (ECHR).<sup>9</sup>
- 2.3. Europe’s 2015 “refugee crisis” spurred Brussels to negotiate the controversial 2016 [EU-Türkiye deal](#) to prevent refugees from leaving its territory for Europe, including establishing that all migrants and asylum seekers who arrived on Greek islands after 20 March 2016 would be liable to return to Türkiye.<sup>10</sup>
- 2.4. In October 2016, Türkiye issued Decree 676. This expanded the grounds for deporting people in the process of applying for international protection,<sup>11</sup> and resulted in increased deportations of refugees and asylum seekers to countries like Afghanistan, Syria, and Iraq.<sup>12</sup> In July 2019, authorities in Istanbul announced raids, stop-checks, and arrests of Syrian refugees registered in other cities.<sup>13</sup> The raids were followed by summary deportations into northern Syria.<sup>14</sup>
- 2.5. Shortly before the onset of the COVID-19 pandemic, in February 2020 Türkiye announced that it would open its borders with Europe and cease efforts to stop refugees from crossing. Thousands of migrants and refugees travelled to the Greece-Türkiye border, with some reports suggesting that Turkish police transported groups to border areas and showed them where to cross.<sup>15</sup> Greek security forces deployed at the border used tear-gas, water cannons, and stun grenades to prevent border crossings.<sup>16</sup> Some people were reportedly detained, assaulted, robbed, and stripped by Greek security forces before being pushed back into Türkiye.<sup>17</sup>
- 2.6. After the US and other international forces pulled out of Afghanistan in mid-2021, the Turkish government stated that it could not take in any more Afghan refugees and that it would not be used as a “migrant storage unit” for refugees trying to reach Europe.<sup>18</sup> (The country was already hosting approximately 300,000 Afghan refugees, and had deported an estimated 53,000 Afghans between 2018 and 2019.<sup>19</sup>) Fearing a new influx of migrants and refugees, authorities constructed a wall and surveillance system along its 295-kilometre border with Iran to prevent refugees from entering the country. The country also summarily expelled

thousands of Afghans, including women and children.<sup>20</sup> Afghan families described repeatedly trying to cross the border from Iran into Türkiye's Van region being caught by the police, and deported or detained.<sup>21</sup>

### 3. RELEVANT RECOMMENDATIONS FROM PREVIOUS CMW CONCLUDING OBSERVATIONS

3.1. In its first periodic review of Türkiye in 2016, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) raised concerns about the “widespread, increasing and automatic detention of a large number of migrant workers and asylum seekers in an irregular situation, including families and children many of whom are apprehended while trying to reach Greece.”<sup>22</sup> It highlighted the case of children, and families with children, who were not always separated from adults in detention facilities as well as unaccompanied children in detention who did not have access to child protection services. The Committee noted the increase in the number of detention centres in Türkiye and the lack of information about alternatives to detention. The CMW recommended that Türkiye:

- (a) “Ensure that administrative detention is used as a measure of last resort only and that non-custodial alternatives are promoted, in line with the Committee’s general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families
- (b) Expediently and completely cease the detention of children on the basis of their or their parents’ immigration status, and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, consistent with their best interests, and with children’s rights to liberty and family life;
- (c) Ensure that a humanitarian as opposed security approach to migration continues to guide all the State party’s policies and practices, including by prioritising alternatives to, rather than increase in, detention.”<sup>23</sup>

3.2. The CMW also highlighted concerns about reports of migrants being held in incommunicado detention with their mobile telephones confiscated and visits by lawyers and family members forbidden. The Committee expressed concern that in violation of Article 68 (8) of the Act on Foreigners and International Protection, detainees were being “subjected to humiliation, violence, torture and solitary confinement in detention and not being informed about the reasons for their detention, the duration of their stay and their rights.”<sup>24</sup> The Committee noted the use of facilities that were not recognised as detention centres, the lack of access to outdoor areas, inadequate food, insufficient access to medical care, overcrowding, understaffing, and unclean conditions in some removal centres. It also raised concerns about insufficient training of detention facility staff on the rights and treatment of persons in immigration detention. The CMW recommended that Türkiye:

- (a) “Investigate effectively all cases of violence and other human rights abuses of detained migrants and provide on a regular basis mandatory human rights training for all law enforcement officials, with a view to preventing such violations;
- (b) Ensure that all migrants and members of their families who are arrested are informed about the reasons for their arrest at the time of arrest and are promptly informed about their rights and the charges against them, in a language they understand;
- (c) Ensure that migrants are detained only in facilities officially designated for that purpose;
- (d) Ensure that all detention facilities provide adequate basic services, including food, health care, hygienic conditions and access to outdoor areas.”<sup>25</sup>

3.3. The CMW also raised concerns about migrants’ access to free legal aid and the right to appeal detention orders before a court, as provided for under Article 57 (7) of the Act on Foreigners and International Protection. The CMW noted “the lack of measures to ensure

that in criminal and administrative proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party and have access to information in a language they understand.”<sup>26</sup> They recommended that Türkiye:

- (a) “Take the steps necessary to ensure that in administrative and judicial proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party before the courts and tribunals;
- (b) Include in its follow-up and second periodic reports detailed disaggregated information on the number of migrant workers detained for immigration offences and the place, average duration and conditions of their detention, as well as information on the implementation of the rights of migrant workers in respect of due process and equality before the courts;
- (c) Ensure that the minimum guarantees enshrined in the Convention are assured with regard to administrative and judicial procedures against migrant workers and members of their families.”<sup>27</sup>

#### **4. RELEVANT RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW**

4.1. During the 3<sup>rd</sup> cycle of the Universal Periodic Review of Türkiye (44<sup>th</sup> session, 15 June – 3 July 2020), member states issued several recommendations relevant to Türkiye’s immigration practices.<sup>28</sup> These included:

- Conduct an immediate, independent and effective investigation into cases of torture or ill-treatment in detention and take judicial measures to prevent such acts and prevent impunity, and ensure compensation for the victims (Egypt) (para. 45.122);
- Intensify monitoring of places of detention and ensure that impartial investigations are carried out into all allegations of torture and ill-treatment, in accordance with its policy of zero tolerance of torture (Switzerland) (para. 45.140);
- Continue to review and assess its immigration laws and policies to ensure that the rights of migrants are safeguarded, in accordance with international human rights standards (Philippines) (para. 45.292);
- Ensure that all asylum seekers and migrants within the territory of Türkiye enjoy their basic human rights (Afghanistan) (para. 45.295);
- Continue the provision of humanitarian aid, education and health services to refugees, migrants and asylum seekers (Sudan) (para. 45.296).

#### **5. CONDITIONS IN IMMIGRATION DETENTION FACILITIES: ILL-TREATMENT AND ACCESS TO HEALTH CARE**

5.1. As Türkiye’s immigration detention capacity grows, there is a notable divide between those detention centres that provide adequate living conditions and those that do not meet EU regulation standards.<sup>29</sup> Lawyers representing clients in detention centres report numerous concerning situations at some centres, including the fact that some detainees have to share a small room with several people and some are denied access to outside space.<sup>30</sup> The Migration Management appears to downplay these concerns, stating: “Immigration Detention Centers in Türkiye are constantly audited by the Turkish Human Rights and Equality

Institution of Türkiye, Provincial and District Human Rights Boards, civil inspectors, and the Directorate General of Migration Management, as well as the European Committee for Prevention of Torture (CPT). Besides, in addition to basic rights and services, many social and cultural activities are carried out by psychologists and social worker personnels.”<sup>31</sup>

5.2. After their 2017 visit to Türkiye, the European Committee for the Prevention of Torture noted that while health care facilities in removal centres were generally of a “good standard” and had “satisfactory” supplies of medicine, many of the health-related recommendations they had made in previous visits to these centres had not been implemented. Among the CPT’s key health-related concerns were the following:

- “[I]t remained the case that no medical screening was usually carried out of newly-admitted foreign nationals and no personal medical files were kept in any of the removal centres visited. Such a state of affairs is not acceptable. The CPT wishes to stress once again the importance of such screening inter alia for the timely provision of medical and psychosocial care, the recording of injuries and the prevention of the spread of transmissible diseases (such as tuberculosis). As regards the latter, prompt screening is essential not only for the protection of the health of foreign nationals but also of staff and the community at large.”
- “The CPT is particularly concerned by the total absence of tuberculosis screening (even in its simplest form of enquiry about key symptoms such as a productive cough, night fevers and weight loss) of foreign nationals who were placed in a removal centre.”
- “Regrettably, some doctors met by the delegation in the removal centres visited appeared to be unaware of the need to record carefully any traumatic lesions, whether they have been caused by accidents, self-harm, fights between detainees or the use of force by security staff. Moreover, in particular at Izmir-Harmandalı and Işıkkent Removal Centres, the quality of the records of medical consultations left much to be desired.”
- “The CPT is also concerned by the fact that all too often no attention was being paid in the removal centres visited to the specific health-care needs of children, in terms of screening, vaccination and adequate medical and psychosocial care. The Committee also wishes to recall that the presence of children in removal centres increases the risk of transmission of contagious diseases common in children (such as measles, chicken pox, scabies and conjunctivitis).”<sup>32</sup>

5.3. Detainees also face considerable obstacles in accessing legal assistance. Detention centres and immigration authorities do not provide detainees with a lawyer or translator and detainees lack knowledge about available legal aid. Authorities in the detention centres say that detainees have access to telephones in the visiting rooms where there is a list of translators; however lawyers claim that the telephones often do not work and translators are never provided. Usually, lawyers hire translators themselves which can be very expensive. If the detainee does not speak Turkish, the notary public requires a translator to be present when they conclude the process of warrant of attorney, which again incurs considerable costs. Although some lawyers have complained about these problems to the Turkish Bar Association and the Istanbul Bar Association, they do not appear to have been resolved.<sup>33</sup>

5.4. As Türkiye has stepped up its immigration controls in recent years, there have been increasing reports of human rights abuses in detention centres and in other control sites along its borders and at ports of entry.<sup>34</sup> Women have also been subjected to abuses and gender-specific violations, including reports of rape of refugee women in some removal centres<sup>35</sup> as well as humiliating strip searches.<sup>36</sup>

5.5. On 23 June 2021, the GDP was informed by a non-governmental actor in Türkiye that a fire had broken out at the [Izmir Harmandalı Removal Centre](#) as a result of an electrical problem at the facility. Fire-fighters evacuated the floor, but a 21-year old Syrian asylum seeker was found dead after the fire was brought under control. The Turkish Migration Department concluded that because the asylum seeker had not left his room during the fire, he must have committed suicide.<sup>37</sup>

- 5.6. According to a report from the Turkish news service SOL, a staff member working at the removal centre told the news agency that refugees and asylum seekers held in the centre are constantly insulted, ridiculed, and humiliated by guards. The staff member said: “I saw that almost all of the male and female security guards are racist and anti-refugee. They don’t receive any training. Especially all of the shift supervisors - except one - are rude.” The staff member added: “Even raising your voice a little bit and demanding a phone card makes the security guards angry.” According to him, as a punishment, people are taken to the so-called foreign terrorist fighter floor, where they are left alone for hours in a room with their hands handcuffed behind their backs. The staff member also said that the centre’s conditions create such feelings of hopelessness that people end up hurting themselves because of it: “I’ve seen young refugees break their arm” just to go to hospital. In addition, he reported that in one case, a woman gave birth and the child had to be kept in hospital under observation. In the meantime, they brought the woman back to the removal centre and left her alone in a room without any support despite having a caesarean delivery and needing care. Another employee said that during the summer, the centre is constantly over capacity and food is sometimes not provided to detainees.<sup>38</sup>
- 5.7. The problems at Izmir Harmandali Removal Centre are indicative of broader problems across Türkiye’s detention system—many of which are reported to have worsened during the COVID-19 pandemic. According to a report by the European Council on Refugees and Exiles, deteriorating conditions in the Izmir facility and other removal centres were compounded by the fact that lawyers, interpreters, and civil society advocates were reluctant to enter removal centres during the pandemic, and meetings with families were stopped. The removal centre in Ankara, for example, did not accept any lawyers visiting after 5PM and lawyers had difficulties examining potential clients’ files. At [Kirkkale Removal Centre](#), ECRE’s report found that requests for a legal aid lawyer were not being delivered to the bar association from the removal centre authorities, which request a power of attorney from the lawyer to access the removal centre. Instead, requests for assistance were mainly being received through the family members of the detainees or through UNHCR.<sup>39</sup>
- 5.8. According to a study published in the Journal of Migration and Health in December 2020, migrants under temporary protection, refugees, and other undocumented migrants have faced numerous challenges in accessing health care in Türkiye. These include difficulties in accessing reliable information and health services for chronic conditions due to language barriers. Moreover, undocumented patients have faced significant delays in registering at health centres.<sup>40</sup> When undocumented migrants do seek health care, they can risk being reported to the police and being deported. This has caused widespread fear among many refugees and undocumented migrants.<sup>41</sup>
- 5.9. Although registered refugees, asylum seekers, and those persons with temporary protection status all had access to COVID-19 vaccines, many have not been vaccinated due to language barriers, difficulties accessing information and booking systems, and fears of being reported to the police and deported.<sup>42</sup>

## **6. TREATMENT OF WOMEN, CHILDREN, VICTIMS OF TRAFFICKING AND OTHER AT RISK GROUPS IN IMMIGRATION DETENTION FACILITIES**

- 6.1. Türkiye continues to detain accompanied and unaccompanied children and their families, mothers with children, and pregnant and nursing women. This is in violation of international standards and guidance that children should never be detained for migration-related reasons, or because of the migration status of their parents;<sup>43</sup> and that mothers with children, pregnant women, and nursing mothers should not be detained for migration-related reasons.<sup>44</sup>
- 6.2. The LFIP defines “persons with special needs” as unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with accompanying children,



victims of torture, rape or other serious psychological, physical or sexual violence.<sup>45</sup> In general, there are no special provisions or protection for “persons with special needs” held in removal detention centres.

- 6.3. The Asylum Information Database (AIDA) of the European Council on Refugees and Exiles cites reports of unaccompanied children, mothers with children, pregnant women, children with disabilities, elderly persons with health conditions, LGBTI persons, sex workers and victims of trafficking being held in immigration detention in Türkiye. The reports also highlights a lack of sensitive or appropriate treatment for these groups—and cases of ill-treatment and discrimination.<sup>46</sup>
- 6.4. Lawyers have also reported to IRRA that mothers with children are held alongside unrelated adults; that children are treated poorly by detention centre staff; that unaccompanied children do not receive age-appropriate treatment; and that detention centre staff and the police often complain about the extra burden of having to look after children, as well as their parents.<sup>47</sup>
- 6.5. Summary, unlawful deportations have also affected women, children, and other vulnerable groups, with authorities “expelling groups of around 100 Syrian men, women and children to Syria on a near-daily basis” since mid-January 2016. Returnees have reportedly included children and pregnant women.<sup>48</sup>
- 6.6. Despite provisions in place to protect women victims of trafficking, they face serious protection challenges. In 2006, Türkiye revised its [Criminal Code](#) to include penalties for smugglers and traffickers (Law No. 5237, Article 89). The LFIP includes the protection of “victims of human trafficking benefitting from victim support processes” from expulsion (Article 55 (1)(ç)). The law provides for the establishment of centres and shelters for victims of human trafficking, as well as for outsourcing operations at these facilities (Article 108 (1)(i)(6)). As such, Türkiye reportedly provides two dedicated facilities for victims of trafficking: one run by the Directorate General for Migration Management (DGMM) in Kırıkkale with 12 spaces, and another operated by Ankara’s municipality with 30 places.<sup>49</sup>
- 6.7. Despite these provisions, observers report that trafficked persons often go unidentified and are detained and deported.<sup>50</sup> In its 2018 report on trafficking, the US State Department found that “the government did not meet the minimum standards in several key areas. Civil society remained largely excluded from anti-trafficking efforts, and specialised support services for victims were limited to a government-run shelter after several NGO-run shelters closed in 2016; critics asserted civil society’s diminishing role hindered the identification and specialised care of victims.”<sup>51</sup> Moreover, according to AIDA, sex workers (and among them, potential victims of trafficking) are at particular risk of detention in removal centres on public order and public health grounds (LFIP, Article 57). In one judgement, the 2nd Magistrates’ Court of Aydın upheld a detention order on grounds of “public security” issued to eight foreign women who had been informally working in a nightclub.<sup>52</sup>
- 6.8. Türkiye has received various recommendations to improve protection of vulnerable persons. In 2012, the UN Human Rights Committee (HRC) urged the country to “protect victims of trafficking from prosecution, detention, or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons.”<sup>53</sup> This recommendation was repeated in 2016 by the CMW.<sup>54</sup>

## **7. INFORMATION FROM THE INTERNATIONAL REFUGEE RIGHTS ASSOCIATION (IRRA) ON TREATMENT OF MIGRANTS IDENTIFIED AS YABANCI TERÖRİST SAVASÇI (YTS) (FOREIGN TERRORIST FIGHTERS)**

- 7.1. The following information provided by IRRA is based on interviews with lawyers representing migrants and refugees in immigration detention facilities in Türkiye. The IRRA research and reporting department met with four different lawyers who are experts in the

law of foreigners, to understand the detention conditions of refugees and migrants in immigration detention.

- 7.2. Detained migrants and refugees are informally categorised into two groups. Migrants in the first group are detained because they have committed a criminal or an immigration offence (for example, visa overstayers or working without a valid permit); while those in the second group are labelled as Yabancı Terörist Savaşçı (YTS) (Foreign Terrorist Fighters) by the Turkish authorities.
- 7.3. While the term YTS has no legal basis, it is used by the Presidency of Migration Management and law-enforcement officers to refer to suspected “foreign terrorist fighters.” It is codified as G-89 in official documents. In the interim decision of İzmir 9th High Criminal Court dated 18/11/2020 with the basis number 2020/79, the Presidency of Migration Management was instructed to refrain from using the label YTS, however lawyers report that to date the practice is continuing.
- 7.4. Reports from lawyers suggest that individuals labelled YTS are often from Chechnya or the Caucasus. Most of them entered Türkiye legally and have lived peacefully in Türkiye on valid residency permits for many years. There are disconcerting reports that the names of individuals labelled as YTS may be passed to the Turkish authorities by foreign States, notably Russia, who claim that they pose a potential national security risk to Türkiye and could use Türkiye as a passage to fight in Syria. Many of them are family members of Chechens who have a connection with the ongoing conflict between Russia and Chechnya, who are accused of terror related activities, or who are already detained in Russia. In some cases, those labelled as YTS in Türkiye may have had little or no contact with their family members in Chechnya for many years. Reportedly, Russian authorities often request that detainees are sent back to Russia so they can carry out security evaluations. Although removals of YTS cases are rare, there is no information about what happens to detainees who are returned to Russia.
- 7.5. Reports indicate differential treatment of YTS and non-YTS refugees and migrants. Non-YTS individuals are generally detained for having committed a criminal or immigration offence in order to prevent absconsion. If the foreigner has a legal address (even if they don't have a residency permit) at which the police can reach them, then they are not automatically detained. According to lawyers interviewed by IRRRA, if a refugee or migrant with a known legal address commits a crime that does not pose a public safety, or national security risk, such as unregistered employment, or changing province without informing the governorship, the law enforcement agencies are less likely to carry out in-depth investigations, raids, or to detain the migrant, due to the cost and heavy bureaucratic burden of such actions.<sup>55</sup>
- 7.6. Migrants identified as YTS, however, are typically detained despite their residency status or having a legal address. Those identified as YTS live in constant fear of being deported. Lawyers defending YTS detainees have to prove that they do not pose a threat to Turkish national security, that they have not committed previous crimes in their countries of origin or in Türkiye, and that they have been living legally in Türkiye.
- 7.7. YTS detainees and those detained for committing immigration and criminal offences may be held in separate parts of a detention centre. Although the living conditions may be the same, the discriminatory and intolerant attitudes towards YTS detainees and their lawyers can result in further ill-treatment and disrespect for this group. There is an assumption that if a person is labelled as YTS that they are a terrorist and pose a security threat to Türkiye. Lawyers representing YTS cases face considerable barriers, including attitudinal and physical barriers to representing their clients. In one case, for example, a lawyer sought to represent a client who had lost both their legs in a bombing in Syria and came to Türkiye for medical care. The client was subsequently labelled as a YTS and detained at a police station. When the lawyer requested to see their client, the police denied permission, arguing that the individual was detained under the YTS code. The lawyer had to remind the police that it was against the law to deny access to a lawyer, even if the detainee was assumed to be a terrorist. Even when the lawyer did gain access to the police station where their client was being held, the police refused to bring the amputee detainee to the meeting

room saying they were short staffed and couldn't carry him, forcing the lawyer to conduct the meeting with the detainee in his cell.<sup>56</sup> In other instances, lawyers representing YTS cases have been called "terrorist defending lawyers."

- 7.8. Lawyers also complain that the detention centres for YTS detainees are located in remote areas on the outskirts of cities that are hard to reach. Representing YTS clients can be very time-consuming as not only do the lawyers have to travel several hours to reach the detention centres, but once there they often have to wait several hours before they can see their clients, as only one lawyer at a time is allowed into the building. Some lawyers claim this is a physical and economic deterrent to representing YTS detainees. In order to obtain a warrant of attorney, lawyers also have to physically bring a notary public to the detention centres, which can pose another obstacle to legal representation.
- 7.9. YTS detainees are generally detained for several months and the criminal courts of peace can extend their detention without the need for an in-depth examination. Many YTS detainees are held in administrative detention for up to one year. If there is no danger of escape or disappearance, detainees who do not have a YTS code are likely to be released from detention within a few days or weeks. Non-YTS migrants who have signed voluntary return documents are even more likely to be released from detention and their removal is facilitated. Even when non-YTS cases do not cooperate with a deportation order, their deportation is rarely carried out forcefully. Once a deportation decision is issued, a migrant (whether they are YTS or not), has seven days to file a lawsuit against the decision; when that process begins the deportation decision is suspended. However, lawyers claim that YTS detainees are rarely informed about their rights and legal remedies when they are issued with deportation orders and are not assisted to access legal aid.
- 7.10. Deportation proceedings for YTS suspects entail issuing the individual with a notice that they are a potential terrorist, followed by a brief investigation, after which an arrest warrant is issued. The individual is then arrested and taken first to a police station and then transferred to the local immigration authority who place them in a detention centre under an administrative detention order. A deportation order is then issued and the detainee has seven days to file a lawsuit. The immigration authorities must be notified and the deportation is suspended until the trial is concluded. The court's decision on a deportation lawsuit is final.
- 7.11. Lawyers representing YTS detainees have claimed that court cases can be politically charged depending on the country of origin of the detainees. For example, in cases involving nationals of Russia, Uzbekistan, or Tajikistan, even when individuals clearly do not pose a national security risk to Türkiye, they are still likely to be coded as YTS cases. In one case a family of four—a mother and her three children—were all identified as YTS cases. During the court hearing, the court removed the YTS code from two of the children, while maintaining the code for the mother and her third child.
- 7.12. If the detainee does not file for the annulment of the deportation decision within seven days, they risk deportation, sometimes in very large groups. In one case, a student from Uzbekistan—who at the time was not carrying their residency permit—was apprehended by a private security guard. They were assumed to have entered Türkiye illegally, were sent to two different detention centres, and were put on a deportation list along with a group of 30 other migrants. Although the student was later represented by a lawyer who successfully filed for the annulment of the deportation decision on the basis that their client was legally in the country as a student, the student testified that there were other third-country nationals in the larger group awaiting deportation who were arrested under similar circumstances. They had also entered Türkiye legally and had all the necessary permits but as they were unable to show their passports or identity documents at the time of arrest and without a translator could not communicate with the officials who arrested them, they were unable to prove their legal status in the country. When the officials checked the foreigners' database for information about the Uzbek student, the database showed only that there were no negative records against him, but it did not indicate that he had a residency permit and was registered in Türkiye as a student. The database lacked all the necessary information that he needed to prove his legal status.<sup>57</sup>

- 7.13. As this case proves, there is no accurate online database of foreigners living legally in Türkiye that officials can refer to at the time of arrest to check a person's identity, documentation, and fingerprints. In the case of collective arrests and deportations, there is also a lack of proper documentation and due process. In such situations, group of migrants can be taken to the border or an airport and summararily deported.

## 8. RECOMMENDATIONS

Based on the information above, the GDP and the IRRA make the following recommendations to the Committee on the Rights of Migrant Workers with respect to the list of issues prior to Türkiye's second periodic review:

- 8.1. Implement all the recommendations relating to immigration detention during the first periodic review of Türkiye in 2016 by the Committee on the Rights of Migrant Workers, including ensuring that "administrative detention is used as a measure of last resort only and that non-custodial alternatives are promoted, in line with the CMW's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families."<sup>58</sup>
- 8.2. Implement the CMW's 2016 recommendation urging Türkiye to "consider withdrawing the reservation relating to the geographical limitation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol." This reservation provides that only refugees from Europe can be recognised as refugees, which results in important protection gaps for refugees fleeing conflicts in the Middle East and elsewhere.
- 8.3. In line with Article 7 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on non-discrimination<sup>59</sup> and non-discrimination principles outlined in General Comment No. 5 (2021) on Migrants' Rights to Liberty and Freedom from Arbitrary Detention,<sup>60</sup> all migrants detained in Türkiye should enjoy equal rights and equal treatment, regardless of their nationality or immigration status. The difference in treatment and access to rights between YTS cases and migrants detained for having committed criminal or immigration offences is unjustifiable and against international and national legal standards.
- 8.4. Ensure that all detainees, regardless of their immigration status, have full access to legal aid and representation, an interpreter, and information regarding their rights, legal processes, and remedies in a language they understand, as per Article 16 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>61</sup> the Committee on Migrant Workers' General Comment No. 5 (2021),<sup>62</sup> and Article 57 (7) of the Act on Foreigners and International Protection.<sup>63</sup>
- 8.5. In line with CMW General Comment No. 5 (2021) on Migrants' Rights to Liberty and Freedom from Arbitrary Detention, ensure that detained migrants have access to physical and mental health services, including sexual and reproductive health services, and psychological care. Where such services are not available in detention centres, detained migrants in need of medical care should be transferred to other facilities.<sup>64</sup> All migrant detainees should have access to adequate health care and appropriate services, regardless of whether they are YTS cases or migrants detained for having committed a criminal or immigration offence.
- 8.6. In line with the recommendations of the CMW to Türkiye during its first periodic review (2016), ensure that all migrant detainees have access to "adequate basic services, including food, health care, hygienic conditions and access to outdoor areas."<sup>65</sup> All detainees, whether they are YTS cases or migrants detained for having committed a criminal or immigration offence, should have access to basic services and access to outdoor recreation areas.
- 8.7. As stated in Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child<sup>66</sup>, children should not be detained, even with their parents, as this constitutes a human rights violation and is never in the best interests of the

child, and in cases where children are with their families the best interests norm requires that the family not be detained but rather receive appropriate reception and care. Moreover, as stipulated by General Recommendation No. 32 of CEDAW, pregnant and nursing women should not be detained, and children should not be detained with their mothers.<sup>67</sup> The Committee should again urge Türkiye to follow this guidance.

- 8.8. Gender-sensitivity and human rights training should be provided to all officials working with women refugees, asylum seekers, migrants, and victims of trafficking to enable them to more appropriately meet gender needs and protect the human rights of women and girls under their care. This includes immigration detention centre staff and officers, immigration officials, lawyers, social workers, and other staff. In particular, staff should be trained to recognise, prevent, report, and protect women and girls against sexual and gender-based violence, harassment, exploitation, and abuse and also be trained to overcome the gender-specific barriers that women may face in accessing legal advice, assistance, and services.
- 8.9. Women and girl refugees, asylum seekers, migrants, and victims of trafficking should be supported to report cases of sexual and gender-based violence, abuse, harassment, and exploitation, including in immigration detention centres; such reports should be thoroughly and sensitively investigated by trained law enforcement officials, and all efforts made to bring the perpetrators to justice.
- 8.10. Türkiye should implement recommendations from the UN Human Rights Committee (HRC) in 2012<sup>68</sup> and the Committee on the Protection of All Migrant Workers and Members of their Families in 2016<sup>69</sup> to “protect victims of trafficking from prosecution, detention or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons.”

## ENDNOTES

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- <sup>67</sup> UN Committee on the Elimination of Discrimination Against Women “General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women,” 14 November 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>
- <sup>68</sup> Helsinki Citizens Assembly (HCA), “Briefing Note on Syrian Refugees in Turkey,” 16 November 2012, [www.hyd.org.tr](http://www.hyd.org.tr)
- <sup>69</sup> Committee on the Protection of All Migrant Workers and Members of their Families (CMW), “Concluding Observations on the Initial Report of Turkey,” 31 May 2016, <https://bit.ly/30LH6kH>