

# £TURKEY

## @Selective protection: Discriminatory treatment of non-European refugees and asylum-seekers

### 1. Introduction

The protection of refugees in Turkey has reached a crisis point. Hundreds of refugees and asylum-seekers are facing a further threat to their already tenuous position in Turkey as the Turkish Government increasingly refuses to cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Turkey. In the last few months Iranians, Iraqis and Tunisians – some of whom were recognized as refugees by the UNHCR and others whose cases were under consideration – have been forcibly returned by the Turkish authorities to the countries they came from. The government appears determined to continue expelling refugees and asylum-seekers, even though many of them risk serious human rights violations in their countries of origin and even though such expulsions are in violation of Turkey's international obligations.

Many asylum-seekers in Turkey are in an extremely insecure situation; one of the main reasons for this is that the government has limited its obligations under international instruments to refugees coming from European countries. There are no clear provisions in Turkish law recognizing the right of refugees and asylum-seekers who come from countries outside Europe not to be forcibly returned to countries where they risk serious human rights violations. Although for some years there has been an informal arrangement with the UNHCR office in Ankara allowing for non-European asylum-seekers to approach that office and remain in Turkey pending a decision on their case by UNHCR, it appears that the government is no longer willing to follow this arrangement. Iranian and Iraqi refugees and asylum-seekers are at particular risk.

With regard to Iraqis, the Turkish Government claims that the establishment of an autonomous Kurdish government in northern Iraq, protected since mid-1991 by overflights conducted by US, French and British warplanes, means that Iraqis have no need to flee the country; as a result, during past months hundreds of Iraqis in Turkey have been forcibly returned to Iraq.

Nor are Iranian refugees and asylum-seekers safe in Turkey: some of them have been forcibly returned to Iran and many others face harassment by the Turkish police. It is feared that protocols dealing with border security and extradition which have been recently

concluded between the Turkish and Iranian governments might lead to further expulsions of members of Iranian opposition groups in Turkey. Also, in the past year, three Iranians who were members of opposition groups have been killed in Turkey in circumstances suggesting they were assassinated by Iranian agents. The cumulative result is that Iranians who have fled in search of safety, and to avoid arbitrary detention, torture or execution in Iran, live in a state of extreme anxiety and insecurity in Turkey – desperate to be recognized as refugees by UNHCR so that they can be resettled as quickly as possible in other countries.

Turkey is situated in the heart of a troubled region. There are conflicts along its borders and in some of the neighbouring countries human rights violations are widespread; it is understandable that the government might be anxious about the arrival of large numbers of people in search of protection. In the late 1980s upwards of 80,000 Iraqis, predominantly Kurds, fled to Turkey to escape the horrendous human rights violations, including the gassing of civilians, being committed by the Iraqi Government. More recently, in the wake of the 1991 Gulf War an estimated 500,000 Iraqis fled to or across the Turkish border in the space of a few weeks following the Iraqi Government's violent suppression of the uprising which took place in northern Iraq. Although almost all of those Iraqi refugees have since returned to Iraq, or been resettled by other countries, several hundred new Iraqi asylum-seekers continue to enter Turkey each year. Hundreds of Iranian asylum-seekers also enter Turkey every year, many of them Iranian Kurds who face persecution in the context of the continued conflict between armed opposition groups and the Iranian Government in Iran's northwestern, predominantly Kurdish, provinces.

The situation is further complicated by the worsening conflict in Turkey's southeastern provinces between the Turkish army and the Kurdistan Workers Party (PKK). The human rights situation in the area is deteriorating as the military steps up its campaign against the PKK, in which political killings, torture of detainees and arbitrary detention are widespread; the PKK also has committed human rights abuses against civilians.

Conflict and national security issues necessarily complicate the situation, but they cannot take away from the fact that individuals have a universally-recognized right to seek asylum and to protection against being returned to territories where their lives or freedom are at risk. This report examines the extent to which non-European refugees and asylum-seekers can obtain effective and durable protection in Turkey and concludes that, for the most part, such protection is lacking. Although international standards should ensure protection for all refugees and asylum-seekers in Turkey, the government has not fully respected these standards. Amnesty International does not in any way question the general right of the Turkish Government to control the admission of non-nationals to its territory. Rather, this report aims to measure the treatment accorded to non-European refugees and asylum-seekers in Turkey in the light of Turkey's international obligations. In some cases, these obligations place restrictions on the general right of states to control the admission of non-nationals.

This report is based on the findings of a research visit to Turkey in November and December 1993. Amnesty International delegates met with officials in the Ministries of Interior and Foreign Affairs, dozens of refugees and asylum-seekers and lawyers and others working with them, staff at the UNHCR office in Ankara, and staff at foreign embassies in Ankara. In addition, the organization has over a number of years received hundreds of letters from refugees and asylum-seekers living in Turkey or who have been in Turkey before being resettled in other countries.

## **2.The geographic limitation: selective protection**

Article 33 of the 1951 Convention relating to the Status of Refugees prohibits the forcible return (*refoulement*) in any manner whatsoever of any person to a country where his or her life or freedom is threatened. However, Turkey has made a geographical limitation under the 1951 Convention according to which, its obligations extend only to refugees coming from Europe. While Turkey has proved willing to accept refugees coming from Europe, non-European asylum-seekers – for the most part those coming from Iran and Iraq – are not entitled under Turkish law to protection against forcible return.

In recent years, hundreds of thousands of refugees from Europe have sought protection in Turkey. According to the Ministry of Foreign Affairs, some 330,000 ethnic Turks from Bulgaria entered Turkey in the late 1980s fleeing the repression carried out against them by the former government. Of these, the government estimates some 170,000 have voluntarily returned to Bulgaria since the change of government there. The ethnic Turks from Bulgaria remaining in Turkey are able to obtain Turkish citizenship. Since the conflict erupted in Bosnia-Herzegovina in March 1992, the Ministry of Foreign Affairs estimates well over 20,000 Bosnian Muslim refugees have entered Turkey. This comprises between 15,000 and 20,000 who have entered as tourists and are located mainly in Istanbul (unlike most European countries Turkey has not imposed a visa requirement on nationals of Bosnia-Herzegovina), and over 3,000 who have been registered as asylum-seekers. The number of registered asylum-seekers is likely to increase following an agreement with the Bosnian Government to resettle Bosnian Muslim refugees currently in Croatia; more than 6,000 refugees may be resettled in refugee camps in Turkey under this agreement. Turkey has also accepted more than 100 cases of sick and wounded Bosnian refugees.

When it was originally drafted the 1951 Convention was intended to cover those who had become refugees as a result of events arising from the Second World War. Therefore the convention had an explicit temporal restriction, limiting its scope to refugees arising from events prior to 1951 (when the convention was adopted). Reflecting its primary orientation towards Europe, the convention gave states the option of applying it only to refugees from Europe or to those from Europe and elsewhere. In 1967 a protocol to the convention was

adopted which removed the temporal restriction and the geographic limitation; the only exception was that states which, like Turkey, had already made geographic limitations restricting the application of the convention to refugees from Europe, were permitted to retain such limitations. Turkey and a few other states did not remove this limitation when the protocol was adopted but at the present time only Hungary<sup>1</sup>, Malta and Turkey are parties to both the convention and protocol while still maintaining the geographic limitation.

There have been repeated attempts over the years to persuade the Turkish Government to remove the geographic limitation and thereby formally accept obligations towards non-European refugees. The government has steadfastly refused to consider such an option. Officials at both the Ministry of Foreign Affairs and Ministry of Interior told Amnesty International that there were no plans to reconsider this position. The main justification for maintaining the geographic limitation appears to be the fear that Turkey would be forced to accept large numbers of refugees and asylum-seekers from neighbouring countries. Turkish officials often complain that pressure from European governments to remove the limitation is unfair since these governments are shielded from potential refugee flows from the Middle East and Asia, whereas Turkey is not.<sup>2</sup>

Although the government argues that removing the geographic limitation would entail undertaking new obligations to a potentially large number of refugees, in fact such a step would in many respects simply be in line with Turkey's existing international obligations. The most important provision of the 1951 Convention is the prohibition on forcible return (*refoulement*) set out in Article 33; this provision is accepted as a rule of customary international law and is binding in all cases without discrimination as to a refugee's country of origin or nationality. This principle of *non refoulement* set out in Article 33 is binding even on states which have not acceded to the 1951 Convention and, as officials at the Ministry of Foreign Affairs conceded to Amnesty International, its prohibition on the forcible return of people to countries where they risk serious human rights violations extends to non-European

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<sup>1</sup> Hungary acceded to the 1951 Convention and 1967 Protocol in 1989 and was not formally entitled to make a geographic limitation since the protocol only allowed states with "existing" limitations (i.e. those made before the protocol was adopted in 1967) to maintain them. However, it appears that neither UNHCR nor any state party to the convention or protocol objected to the Hungarian action at the time.

<sup>2</sup> It must be said that, given the increasing tendency of European governments to restrict the access of asylum-seekers to their territories by means of visa requirements, or by sending them back to countries they passed through -- policies likely to lead to more asylum-seekers ending up in Turkey -- the Turkish Government has some grounds for complaining about such pressure from European governments. Amnesty International has repeatedly raised concerns about such restrictive measures, particularly those being developed by member states of the European Union, and has recently pointed to the adverse effects that such measures may have on the protection of refugees in other countries (see *Refugee protection at risk: Amnesty International's recommendations to the 44th session of the Executive Committee of UNHCR*, AI Index POL 33/06/93, September 1993).

refugees in Turkey. Furthermore, Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly prohibits the forcible return of people to countries where they risk being tortured, and Article 3 of the European Convention on Human Rights and Fundamental Freedoms has also been interpreted to provide a similar prohibition. Turkey is a party to both instruments.

It should also be pointed out that many other countries which, like Turkey, have neighbouring countries from which large numbers of refugees are likely to flee have not felt it necessary to limit the scope of the 1951 Convention. Of the more than 120 states party to the convention and protocol, only a few maintain geographic limitations. Indeed, such a limitation appears increasingly anachronistic and discriminatory and the intergovernmental Executive Committee of the UNHCR, of which Turkey is a member, has called on states maintaining the limitation to consider removing it.

Finally, as discussed in detail below, the Turkish Government is now maintaining that it, and not the UNHCR, will be responsible for deciding whether non-European asylum-seekers have "genuine" claims. If this is a position put forward in good faith, then the government should be willing to remove the geographic limitation and formally accept its obligations to non-European asylum-seekers.

### **3. Forcible return of people to countries where they are at risk**

#### ***3.1 Iranian refugees and asylum-seekers***

In past years there have been numerous cases where Iranian refugees and asylum-seekers have been forcibly returned to Iran from Turkey. In July 1988 Amnesty International reported numerous instances of forcible return that had taken place in 1987 and the first half of 1988. At least four of those forcibly returned were reportedly executed and others imprisoned and tortured after return to Iran. A further Amnesty International report in July 1989 described the cases of nine Iranians forcibly returned to Iran in November 1988: seven of them were reportedly executed by firing squad after their return and the two others detained. In many of these cases the Iranians had been recognized as refugees by the UNHCR or their applications for refugee status were under consideration at the time they were returned.

In February 1992 Amnesty International wrote to the Turkish authorities about the cases of five Iranians who had been forcibly returned to Iran in late 1991. The organization also expressed serious concern about an incident in January 1992 when over 100 Iranian refugees were arrested in Ankara and taken by bus to a town near the Iranian border. Their forcible return was prevented after the intervention of the UNHCR and human rights

organizations and they were eventually allowed to remain in Turkey pending resettlement. In all of these cases the Iranians had been recognized by UNHCR as refugees or their cases were under consideration.

In January 1993 Amnesty International wrote to the Turkish authorities about the cases of two Iranians whose cases were reportedly under consideration by the UNHCR office who were arrested with their families in Turkey and were in imminent danger of being forcibly returned to Iran. No response was received to this letter and later reports indicated both had been forcibly returned with their families and at least one of them was being detained in Iran. Most recently, Amnesty International received information that in January 1994 at least six Iranian asylum-seekers, one of whom had been recognized as a refugee by the UNHCR and four others whose cases were under consideration, were expelled; the recognized refugee was apparently deported to northern Iraq and the others were taken to the Turkish town of A\_r\_, near the Iranian border, and forced across the border into Iran.

Amnesty International is not usually in a position to confirm reports that in many cases Iranians returned to Iran are arbitrarily detained or executed. Amnesty International has been denied access for research about the human rights situation in Iran since 1979 and there are no independent human rights organizations in Iran which could be relied on to confirm or deny accounts of human rights violations against returned asylum-seekers. In cases where the Iranians are members or supporters of political groups or parties in opposition to the Iranian Government, then it is likely that if their activities or views were known to the authorities they would face arbitrary detention and torture, and lengthy prison sentences after unfair trials and possible execution. Many of those returned have been members or supporters of such parties including Komala (Communist Party of Kurdistan), and the Kurdish Democratic Party of Iran (KDPI) (including the KDPI-Revolutionary Command, a splinter group).

In addition to risking forcible return to Iran, Iranian asylum-seekers in Turkey face harassment and, in some cases, ill-treatment by the Turkish police. On 13 October 1993 at least four Turkish policemen dressed in civilian clothes went to an apartment where several Iranian refugees and asylum-seekers were staying. They arrived at around 10:30 pm and stayed until about 3:30 am. The residence was being used by members of the Iranian Refugees Council (IRC – an ad hoc body set up by Iranian refugees and asylum-seekers in Turkey) in Ankara as an informal office and meeting place. The leader of the IRC at the time, Amir Khalili (who had been recognized by UNHCR as a refugee), had been at this apartment earlier in the evening but had left after receiving a telephone call indicating that Turkish officials had been visiting the homes of other Iranian refugees and asking his whereabouts. Amir Khalili had been interviewed on Turkish radio the day before when he had spoken about the insecure situation of Iranian refugees and asylum-seekers in Turkey. The two Iranians who were at home were questioned about the activities of the IRC and about Amir Khalili and other refugees associated with the IRC; they claim they were also

threatened with deportation. The apartment was searched and some documents concerning the IRC's activities were taken. Apparently, several other homes where Iranians were living were visited the same night. According to UNHCR, the government claims these visits were made to gather information concerning the killings of two Iranian refugees in Turkey in August. If this was indeed the purpose of the police raids, it is not clear why the Iranians' homes were visited so late at night and why the questioning seemed to focus on the activities of the IRC and those associated with the organization -- such actions seemed designed to intimidate the Iranians.

At around the same time in October 1993, another Iranian who was associated with the IRC was detained for approximately 48 hours at the *Emniyet Müdürlüğü* (Police Headquarters) in Ankara and interrogated by the Turkish police concerning the activities of the IRC, the whereabouts of various Iranians in Turkey and about various documents in his possession including lists of Iranian asylum-seekers rejected by UNHCR and documents about the situation of Iranian refugees and asylum-seekers in Turkey. He was arrested while travelling on a bus in Ankara; the police had been following him and when he boarded a bus it was stopped and he was taken off. There was no reason given or warrant issued for his arrest. At one point, he was allowed to make a telephone call and through friends alerted UNHCR of his arrest. He was interrogated for several hours over two days, and was repeatedly kicked and beaten by those interrogating him.

In March 1991 police in Ankara detained some 12 Iranian asylum-seekers, several of whom were reported to have been interrogated under torture. They are alleged to have been stripped naked and hosed with pressurized cold water. At least one of them, Daryü Lorestani, was reportedly sent to Nümüne Hospital because of deteriorating health due to torture. A UNHCR representative is reported to have tried to see the detainees who were in hospital, but was refused access.

### 3.1.1 Security agreements with Iran

The insecure situation of Iranian asylum-seekers in Turkey is further exacerbated by recent protocols agreed between Iran and Turkey concerning, among other things, "common security problems" and "measures to improve border security". A protocol signed on 15 September 1992 established a "Common Security Committee" made up of officials from both countries reporting to their respective ministries of interior, which was to meet regularly and was set up to "prevent terrorist activities whose aims are secession and the destruction of the territorial unity and the legal systems of the respective countries". The two countries also agreed to "create more intensive measures to prevent clandestine border crossings", to cooperate on preventing the use of forged passports, and to enforce existing agreements concerning extradition. At a meeting in October 1993 a second protocol was signed on continuing the regular meetings of the "Common Security Committee" and providing for "regular border security meetings"; the need to enforce extradition agreements was again stressed.

After reports that the first protocol had been concluded, Amnesty International wrote to the Turkish authorities seeking assurances that the new measures would neither obstruct the right of individuals fleeing Iran to seek asylum in Turkey, nor allow for the forcible return of any person to Iran who would be at risk of serious human rights violations there. While not disputing the right of a government to take measures to protect the security of its borders or enter into extradition agreements, the organization pointed out that such measures must not conflict with a government's international human rights obligations. The Turkish Government did not respond to this letter, although officials whom Amnesty International met in November 1993 insisted that any agreements with Iran concerning extradition (and similar agreements with other countries) did not extend to those fleeing religious or political persecution.

Despite these assurances, Amnesty International remains concerned that the security protocols agreed with Iran may in fact obstruct Iranian asylum-seekers from entering Turkey and lead to the forcible return of Iranians who risk serious human rights violations in Iran. Although the Turkish Penal Code prohibits the extradition of those charged with political or related crimes, it is not clear whether Iranian asylum-seekers who might be forcibly returned to Iran would have an opportunity to challenge an expulsion order. In most cases of actual or attempted expulsion known to Amnesty International, the Iranian asylum-seekers have been arrested by the police and taken immediately to the border with Iran without being given any opportunity to have access to a lawyer or to challenge the legality of the expulsion order in court.



### 3.1.2 Killings of Iranians in Turkey

Iranian refugees and asylum-seekers in Turkey who are known members of opposition groups are also at risk of being killed, apparently by agents of the Iranian Government. On 4 June 1992 Ali Akbar Ghorbani, a member of the People's Mojahedin Organization of Iran (PMOI), was abducted in Istanbul; his body, which reportedly bore the marks of torture, was discovered in a forest near Yalova in Turkey in January 1993. In December 1992, Abbas Gholizadeh, a member of *Derafsh-e-Kaviani* (Flag of Freedom Organization, a monarchist group) was abducted near his home in Istanbul; there are reports that persons have been arrested who admitted to abducting and killing him but no further information is available. On 25 August 1993 Mohammad Ghaderi, a former member of the KDPI, was abducted from his home in Kirshahir, also reportedly by two men disguised as Turkish policemen, and his mutilated body was discovered some ten days later. On 28 August 1993 Bahram Azadifar, a member of the KDPI, was found dead in his house in Ankara. He had reportedly been visited by two men disguised as Turkish policemen who killed him instantly. Most recently, on 4 January 1994, Taha Kermanj, a leading member of the KDPI (Revolutionary Command), was shot dead near his home in Çorum. He had fled to Turkey early in 1993 from northern Iraq, where he had reportedly received death threats from Iranian agents. There are reports that three men, two of them Iranians, have been arrested in connection with this killing.

Although it has not been conclusively shown that the killings of these Iranians in Turkey were carried out by agents of the Iranian Government, there have been several Iranian opposition figures killed abroad in the past few years in circumstances suggesting they might have been extrajudicially executed by the Iranian Government. With regard to the killing of Ali Akbar Ghorbani, the Turkish Minister of the Interior, Ismet Sezgin, announced at a press conference in February 1993 that an "Islamic fundamentalist group with Iranian links" had killed Ghorbani (as well as two Turkish citizens) and that members of the group who had been arrested "have confessed that they have received military training at an official Iranian facility between Tehran and Qom". The prosecution and trial of those arrested is still under way.

Many of the Iranians interviewed by Amnesty International pointed to these killings as evidence of their insecure situation in Turkey; some reported that they had received death threats or that they were being followed by Iranian agents. These fears are commonly reported to the UNHCR office or foreign embassies in the hope of leaving Turkey as quickly as possible. When Amnesty International raised this issue with staff at UNHCR and some foreign embassies in Ankara, it was apparent that while they acknowledged a few Iranians were genuinely at risk of being killed in Turkey, they believed the reports from many others of death threats were not credible and were simply repeated to secure resettlement. However, given that for the most part the perpetrators of these killings have not yet been found or brought to justice and that the killings continue, it is entirely justified for many

Iranian refugees and asylum-seekers to fear that they too risk abduction, torture and assassination in Turkey.

### **3.2 Tunisian refugees**

In the past two years dozens of Tunisian asylum-seekers have arrived in Turkey. They are members or supporters of *al-Nahda*, an Islamist opposition party in Tunisia which has been banned by the Tunisian Government. *Al-Nahda* members have been arbitrarily detained in Tunisia, in many cases solely on account of their non-violent opposition to the government, and torture and ill-treatment during detention is common; hundreds of them have been sentenced to lengthy prison sentences after unfair trials and three were executed in 1991.

Hundreds of Tunisians have fled abroad in the face of this repression, for the most part to Algeria and Libya. However, Tunisian refugees are not safe in either Algeria or Libya as both countries have forcibly returned Tunisian refugees to Tunisia. Increasingly, the refugees have tried to seek protection in European countries. Due to the difficulties of getting visas for many European countries, dozens of Tunisians went to Turkey, for which they did not require a visa, and approached the UNHCR office in Ankara asking for protection. The UNHCR office interviewed over 50 Tunisian asylum-seekers in Turkey between mid-1992 and August 1993 and, as far as Amnesty International is aware, the vast majority of those were eventually recognized as refugees by the UNHCR office. However, despite being recognized by UNHCR as refugees, the Tunisian refugees were not safe in Turkey. Two of them were forcibly returned to Tunisia and one of these, Lotfi Amami, was detained on his return and is currently in prison in Tunis. Amnesty International has been unable to establish on what charges he was detained, as his lawyer and family members are afraid to communicate with the organization.

In January 1993 the Turkish Interior Minister held meetings with his Tunisian counterpart in Tunis at which they agreed to co-operate on a number of issues. Within the framework of discussions on "state security", the minutes of the meeting record that "the Turkish side will inform Tunisia of activities of ENNAHDA [sic] militants detected in Turkey and of passages through Turkey of these militants", and further Turkey agreed "not to permit known members of the movement known as ENNAHDA to enter Turkey". The minutes also record that the Tunisians "expected fundamentalist Tunisian elements not to be sheltered on Turkish soil".

Although the Tunisians in Turkey were recognized as refugees by the UNHCR office, they faced difficulties in finding countries willing to accept them for resettlement. UNHCR put the cases forward to several embassies in Ankara, but the countries either refused to resettle the refugees or kept decisions pending. Amnesty International was told by staff from both UNHCR and some embassies that western countries – who are the ones who, for the

most part, operate resettlement programs in Turkey – were reluctant to accept Tunisian refugees who were *al-Nahda* members or supporters because they perceived their Islamist views to be extremist.

The existence of the Turkish agreement with Tunisia was widely known and with the prospect of resettlement fading several of the Tunisian refugees tried to leave Turkey. Many of them did not have valid travel documents and their only option was to use false documents. Although some did manage to leave Turkey, at least three of them were stopped while trying to leave Atatürk Airport in Istanbul, and two of them were forcibly returned by the Turkish authorities to Tunisia. Hafdhi Boulbaba was forcibly returned to Tunisia on 13 May 1993; he and another Tunisian refugee, Bechir Bouhari, had been stopped trying to leave Turkey with false documents on 23 April 1993. They were both immediately handed over to the Tunisian Consulate in Istanbul. They fled the consulate by leaping from a third floor window but Bechir Bouhari was injured in the fall and Boulbaba remained with him in the street outside the consulate. They were both re-arrested by the Turkish police and Bouhari was hospitalized while Boulbaba was forcibly returned to Tunisia despite the intervention of UNHCR. He was detained and imprisoned by the Tunisian authorities on his return although it is not known on what charges. Bouhari was eventually resettled in Denmark.

Lotfi Amami was stopped at Istanbul Airport when trying to board a flight for France; he was carrying forged papers indicating he was a French citizen of Tunisian origin. Amnesty International was told by Amami's lawyer and friends of his in Turkey that Amami had passed through the passport control at the airport but just prior to entering the departure lounge was stopped, apparently by staff working for Air France because of a suspicion that his documents were not valid; airlines are believed to be concerned about the risk of fines being imposed by the French authorities for carrying passengers with improper documents and have often instructed their staff to take action to minimize this risk. He was detained and forcibly returned to Tunisia on 9 November. The UNHCR office had written to the Turkish authorities about the case asking that he not be forcibly returned to Tunisia. Also, a lawyer tried to prevent the deportation and some parliamentarians also intervened. It is not clear whether the Tunisian authorities were contacted by the Turkish Government or whether a request was made for Amami's extradition. Amami was taken for questioning to the General Security Directorate at Gayrettepe whereas issues relating to immigration control are usually dealt with at the Foreigners' Bureau in Ca\_alo\_lu.

Officials at the Ministry of Foreign Affairs told Amnesty International that they had been approached about several Tunisian cases by UNHCR and that the Ministry "shared UNHCR's logic" that they should not be returned to Tunisia or unsafe neighbouring countries. They also insisted that the Turkish agreement with Tunisia did not mean that those fearing political or religious persecution would be forcibly returned to Tunisia – a position reiterated by officials at the Ministry of Interior. However, with regard to the case of

Lotfi Amami, the officials said that at no point had he indicated to the Turkish authorities his fear of returning to Tunisia and that he had signed a document saying that he was returning voluntarily. Neither UNHCR nor Amami's lawyer have received a copy of this document; the lawyer told Amnesty International that although Amami may have signed such a document it would have been in written in Turkish, a language of which Amami had no knowledge.

In June 1993 seven other Tunisians in Turkey were arrested in Ankara and detained in a refugee camp near Yozgat, east of Ankara. In August, they were taken by bus to Izmir in western Turkey, apparently with a view to deporting them to Libya but, after UNHCR intervened, they were returned to Yozgat. In December 1993 New Zealand agreed to accept three of these seven for resettlement but at the time of writing the other four are still in an extremely precarious situation; the Turkish authorities have reportedly told UNHCR on numerous occasions that they must leave the country or face forcible return to Tunisia. Other Tunisians who remain in Turkey, though not in detention, are extremely anxious as it appears UNHCR is still finding it difficult to identify countries willing to accept them for resettlement.

### ***3.3Iraqi refugees and asylum-seekers***

Recently the Turkish authorities have been systematically arresting and forcibly returning Iraqis to northern Iraq.<sup>3</sup> Several of those returned have been refugees recognized by the UNHCR office in Ankara and others have been asylum-seekers whose cases are under consideration by UNHCR. While it is not possible to be certain about the precise number of those returned, Amnesty International has been told that more than 300 Iraqis have been deported in recent months. At least seven of those returned, and most likely more, were refugees recognized by UNHCR and 30 others had their cases under consideration by UNHCR. In some cases, those who had been recognized as refugees had already been accepted for resettlement by other countries and were waiting to leave Turkey.

In meetings with officials at the Ministry of Interior in November 1993 Amnesty International delegates were told that, as far as the Turkish authorities were concerned, there were no genuine refugees coming from Iraq. The officials indicated that due to the creation of a "safe haven" in northern Iraq, which was still being protected by overflights conducted by US, French and British warplanes from an airbase in Turkey, people in northern Iraq were safe and there was no reason to seek asylum abroad. The officials added that individual Iraqi

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<sup>3</sup> In 1990 Amnesty International reported on numerous cases of Iraqis, some of whom had been recognized as refugees by the UNHCR, who were forcibly returned to Iraq from Turkey, and expressed concern that many other Iraqi refugees might have been coerced into returning to Iraq.

nationals could enter Turkey legally if they had a valid passport and applied for and received a visa at the Turkish border.

The Turkish Government appears determined not to receive any new refugees from Iraq. The government has even refused to grant permission to leave Turkey to Iraqi refugees recognized by UNHCR and who have been accepted for resettlement by other countries. The people affected number in the hundreds; they are Iraqis who entered Turkey without proper documents after October 1991 – the time when the last Iraqi soldiers withdrew from northern Iraq, and which the Turkish authorities are using as a cut-off date after which they believe no "genuine" refugees left Iraq. The Turkish Government appears to believe that to allow Iraqi refugees to leave Turkey for a resettlement country would simply encourage new arrivals of Iraqi asylum-seekers in Turkey. Several hundred Iraqis are thus being denied their right to leave Turkey, a right recognized under international law, and are being forced to remain in Turkey where, as recent events have shown, they risk being forcibly returned to Iraq.

While there is no doubt that the situation in northern Iraq has dramatically changed since April 1991 when the "safe haven" was established (followed six months later by the departure of all Iraqi soldiers from northern Iraq), and the establishment in 1992 of an independent Kurdish administration and parliament in northern Iraq, it is unjustified to conclude that people may not have good reason to flee northern Iraq. During 1993 there have been a number of politically motivated killings in northern Iraq, apparently perpetrated by Kurdish political parties. Among those killed were several members of left-wing Kurdish political groups, while others have been arbitrarily detained in recent months; several members of such groups have fled to Turkey and been recognized as refugees by the UNHCR. Moreover, Iraqis who are fleeing government-controlled territory in Iraq and who arrive in northern Iraq might not be safe there; agents of the Iraqi Government are known to be active in northern Iraq and there have been reported killings by them.

## **4. Procedures for refugee recognition for non-European asylum-seekers in Turkey**

The status of European asylum-seekers in Turkey is governed by the 1951 Convention which has been directly incorporated into Turkish law and its provisions are therefore part of Turkish law. However, as noted above, since Turkey maintains the geographic limitation there is no clear protection in Turkish law for non-European asylum-seekers, and no legal provisions exist for non-Europeans to apply for asylum to the Turkish authorities. Non-European asylum-seekers therefore fall under the provisions of general laws relating to the treatment and status of foreigners in Turkey, such as the Passport Law (Law No. 5682 of 15 July 1950) and the Law on Sojourn and Movement of Aliens in Turkey (Law No. 5683 of 15 July 1950). Those asylum-seekers who arrive with valid documents and, if necessary, visas, are permitted to enter the country as visitors, students or to work, as the case may be, and it appears that they can freely contact the UNHCR office for the purposes of applying for refugee status and eventual resettlement. However, when asylum-seekers arrive in Turkey without documents or with improper documents, since there is no special provision made for them, they fall foul of these laws and are liable to prosecution for "illegal" entry and to deportation.

For many asylum-seekers, particularly those coming from Iran or Iraq, it is difficult to obtain valid travel documents. People who are being sought by the authorities of their own country as a result of their political views or activities are unlikely to be in a position to apply for and receive a valid passport. The intergovernmental Executive Committee of UNHCR, of which Turkey is a member, has concluded that "circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are threatened".<sup>4</sup> Although Iranians are not required to obtain visas before entering Turkey, few of them are in possession of or able to obtain valid passports when they leave Iran. Because of this they cannot enter legally by crossing the border at a recognized port of entry, so they often resort to paying smugglers to take them "illegally" over the mountainous border. Other Iranians cross into northern Iraq where the border is also mountainous and difficult to control, and then make their way through Iraq to the Turkish border where, with the assistance of smugglers, they cross into Turkey. Iraqi nationals require visas to enter Turkey and, according to the Ministry of the Interior, these can be obtained at the Turkey-Iraq border point at Harbur although only a limited number of visas are issued. Moreover, it is difficult to obtain a passport in Iraq, so many Iraqi asylum-seekers pay smugglers to cross the border "illegally" into Turkey.

### **4.1 Informal arrangement with UNHCR office: limited protection**

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<sup>4</sup> Conclusion No. 58 of 1989, paragraph (i)

Although improperly documented asylum-seekers from Iraq and Iran are present "illegally" in Turkey, an informal arrangement has developed over the years between the UNHCR office and the Turkish Government whereby they and other non-European asylum-seekers have been allowed to remain in Turkey while their cases are under consideration by the UNHCR; those accepted by UNHCR have been allowed to stay until a resettlement country is found. This arrangement, though unsatisfactory in many respects, provides some minimal protection, but at the time of writing this report it appears that the Turkish Government is no longer willing to follow it (discussed below).

Although practice appears to vary from one case to another, in principle the arrangement works as follows: asylum-seekers who approach the UNHCR office in Ankara are registered and given a letter instructing them to report to the police. Asylum-seekers with this letter are then registered by the police and issued with a type of residence permit (*Ikamet Belgesi*) allowing them to remain in Turkey for an initial three months which can be renewed by the local police for a period up to 12 months. A further three-month extension can be granted with the permission of the Ministry of Interior and, in some cases, though with extreme difficulty, the ministry may grant a further three months. It is expected that during the 12 months (but, in any event, before 15 months have elapsed) the asylum-seeker will have his or her case decided by UNHCR and, if accepted as a refugee, leave Turkey for a country willing to accept him or her for resettlement. Those whose cases are rejected by UNHCR are expected to leave Turkey or face being forcibly returned to the country they came from. Since the UNHCR office is in Ankara this is where the asylum-seekers usually first arrive; they are advised by smugglers, friends abroad or political associates on how to get in touch with the UNHCR. However, in the case of Iranian refugees the Turkish authorities have insisted for a number of years that they reside in one of 13 smaller cities around Ankara while waiting for UNHCR to make a decision on their case. The normal practice is for the police to require an Iranian asylum-seeker and his or her family to leave Ankara for an assigned city after three months in Ankara. The Iranians are not allowed to leave these cities without permission from the local police, and are required to report regularly to the local police station to sign a record of their presence (signature duty).

This arrangement is still being followed by UNHCR for Iranian asylum-seekers, although Iraqi asylum-seekers who approach UNHCR are not instructed to register with the police since for a number of months the government has refused to register Iraqi asylum-seekers. For the same reason the Tunisian asylum-seekers have not been instructed to register with the police. Apparently, after an Iranian asylum-seeker has been in Turkey for 15 months the government requests from the UNHCR information about his or her status; those whose cases have received a final rejection from UNHCR risk deportation.

Although the arrangement appears to be a pragmatic means of ensuring protection for non-European asylum-seekers, in practice there are numerous difficulties. Foremost among these is simply that the arrangement has no legal basis. Officials at the Ministry of Interior

made clear to Amnesty International that the 12-15 month period during which the asylum-seekers were allowed to stay in Turkey "had no legal basis" and was purely for "humanitarian reasons". The protection offered therefore is somewhat illusory as the Turkish Government does not seem to accept that it is acting under any legal obligation towards the asylum-seekers. As noted above, in many cases over the past number of years Iranians and Iraqis who were recognized by UNHCR or whose cases were under consideration have been forcibly returned to their countries of origin. The lack of any legal basis for the arrangement undermines the UNHCR's ability to protest effectively against such actions; all it can do is plead with the government, for humanitarian reasons, to respect the arrangement.

Further, many problems arise from the requirement that Iranian asylum-seekers report regularly to the police after registering. Although practice varies in different cities, most Iranians are required to report daily. Amnesty International heard numerous accounts that Iranians are harassed and on occasion ill-treated when they report to the local police for signature duty. Asylum-seekers also report that they are often threatened with deportation by the police and that minor infractions such as failing to immediately notify the police of a change of address, or of arriving late for an assigned time to report can lead to verbal abuse and beatings. According to officials the purpose of the signature duty is to keep track of the asylum-seekers' whereabouts for their own safety, since the officials believe that different factions of Iranian asylum-seekers may be threatening each other and this may even account for the recent killings of Iranians in Turkey. The same officials denied any police harassment or ill-treatment of asylum-seekers who were reporting for signature duty. While it is difficult to confirm these accounts, the frequency with which they were reported to Amnesty International, and the fact that torture and ill-treatment of detainees by police is widespread and systematic in Turkey, leads the organization to conclude that there is cause for concern. The asylum-seekers often report such incidents to the UNHCR office and that office confirmed that it frequently receives complaints from asylum-seekers about treatment by the Turkish police. However, the UNHCR office was not in a position to confirm any recent incidents of ill-treatment, although UNHCR staff said the reports of being harassed and threatened with deportation were credible.

Iranian asylum-seekers in Turkey are in a very insecure situation and the obligation to report regularly to the police must be viewed in this context. While it is legitimate for the government to keep a record of their movements, the obligation to report on a daily basis appears unduly harsh. Further, those fleeing persecution by the police or security officials in their own countries are understandably apprehensive of authorities – especially when these authorities show little or no understanding of their situation and even harass and intimidate them.

A further problem with the informal arrangement is that the period of time during which the residence permit is valid is often insufficient to allow for the full processing of the case from the time a person is interviewed by UNHCR until, if accepted as a refugee, they



are able to depart for a resettlement country. Many of the asylum-seekers interviewed by Amnesty International were recognized by UNHCR only after two or three interviews; having been initially rejected, they had to seek a review or a re-opening of the case and this process can sometimes take several months. Once a person is accepted it can take many months for UNHCR to find a country willing to resettle the person and even then medical examinations, processing of visas and other formalities can take more months. It is not uncommon for refugees to wait more than two years in Turkey before being resettled. As indicated above, it is very difficult to get residence permits extended longer than 15 months, and officials at the Ministry of Foreign Affairs indicated to Amnesty International that they wanted to shorten the period to 11 months. Even if the authorities were more flexible in extending the residence permits beyond 15 months, many asylum-seekers would be afraid to approach the police to seek an extension because they fear they will be forcibly returned to the countries they have come from.

#### ***4.2 UNHCR recognition procedures***

When asylum-seekers first approach the UNHCR office they are registered and scheduled for a first interview with a UNHCR legal officer; the interview normally takes place within three months and, in most cases, within six weeks. Until recently, asylum-seekers were not systematically given any advice by UNHCR on the procedures followed or on their rights. However, since June 1993 asylum-seekers approaching UNHCR are given an "information notice" which gives basic information concerning the procedures followed in determining eligibility for refugee status (including prospects for having negative decisions reviewed or cases re-opened), and possibilities for obtaining medical and financial assistance and counselling related to legal or social problems in Turkey. After the first interview a decision is made on the case and the person is notified by letter of that decision: cases are either accepted, rejected as "manifestly unfounded", or rejected but given an opportunity to have the case reviewed. A decision that a claim is "manifestly unfounded" is, in accordance with conclusions of the Executive Committee, made only if the claim is clearly fraudulent or not related to the criteria for refugee status set out in the 1951 Convention. UNHCR staff indicated about 10% of Iranian claims and 40% of Iraqi claims were rejected as "manifestly unfounded".

Those whose cases are rejected are sent a short letter which simply informs them of the rejection and notifies them that they have 30 days to set out in writing the reasons justifying a review of the case; in the majority of rejected cases there will be a second interview, conducted by a different legal officer, to review the case. Cases which are determined to be "manifestly unfounded" are closed without the asylum-seeker having a right

to a review<sup>5</sup>; closed cases can be re-opened if the asylum-seeker has new information or information which was, with good reason, not presented at the first interview. Cases closed after a negative decision on review can be re-opened for similar reasons.

Over the past few years Amnesty International has often received complaints about the procedures followed by the UNHCR office in Ankara in determining refugee status. The refugees and asylum-seekers interviewed by Amnesty International in Turkey repeated many of these complaints, which centre on the allegation that many asylum claims are unfairly rejected by the UNHCR office. Asylum-seekers claim that the UNHCR officers interviewing them are insufficiently aware of the human rights situation in the countries they come from, that asylum-seekers are not given the benefit of the doubt and unrealistic demands are imposed on them to prove their claims through documentation, that the review procedures are ineffective, that certain groups of asylum-seekers (for example, Iranians who come through Iraq to Turkey) are discriminated against, and that UNHCR does not act with sufficient vigour in pursuing resettlement opportunities for those who are accepted as refugees.

It is difficult to substantiate these allegations. There have been cases which have come to Amnesty International's attention which have been rejected by the UNHCR office and where Amnesty International believes the person would risk serious human rights violations if returned to his or her country of origin. The majority of such cases have, eventually, been recognized by the UNHCR office. There is no doubt that the UNHCR staff in Ankara operate under enormous, sometimes intolerable, pressure. Not all of those who approach the office are necessarily in need of protection and decisions must be made in a climate where the government is less than cooperative, and sometimes openly obstructive, and the asylum-seekers are insecure and desperate.

Nevertheless, Amnesty International believes that some aspects of the UNHCR procedures need to be improved. First, there is no systematic effort to provide any counselling to asylum-seekers before they have their cases considered. Such counselling might include a detailed explanation of the definition of a refugee set out in the 1951 Convention and other categories of persons entitled to protection, and the prospects for particular individuals to be accepted as refugees, as well as personal counselling on items covered in the "information notice". Since asylum-seekers are not provided with legal advice and assistance in preparing and presenting their claims (as they would be entitled to in many countries), it is essential that some effort be made to ensure asylum-seekers are fully aware of

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<sup>5</sup> although before such cases are closed the file is reviewed by the Head of the Legal Unit in the UNHCR Office in Ankara

what the process involves and their rights in that process<sup>6</sup>. Also, Amnesty International found that many asylum-seekers are confused about the process and UNHCR's role, and, given their insecure situation, are susceptible to accepting misleading or incorrect advice from others. A systematic effort to provide counselling before the process begins could go some way to addressing this problem<sup>7</sup>. In other countries where UNHCR is involved in refugee recognition procedures such "pre-screening counselling" is provided.<sup>8</sup>

Second, measures need to be taken to establish a more effective review process. All rejected applicants, including those whose cases are determined to be "manifestly unfounded" should have an automatic right to have their cases reviewed; no case should be closed until it has been considered by a different legal officer from the one who initially rejected it. While review procedures for "manifestly unfounded" claims may be more expedited than that for other cases, the UNHCR Executive Committee has concluded that some form of review is required even for "manifestly unfounded" cases. Moreover, asylum-seekers whose cases are rejected should not be required to submit reasons justifying a review – a second full interview should be automatic if the asylum-seeker asks for it. The possibility to have a case re-opened on the basis of new information is not a substitute for providing a full review of a rejected case, since the review should entail a second, thorough consideration of the information already submitted, not simply a reconsideration in the light of new or additional information. Finally, it is not the practice of the UNHCR office in Ankara to set out in writing the reasons for rejecting an asylum claim. An effective review requires that the asylum-seeker be in a position to rebut or counter adverse inferences, to provide evidence that was considered lacking, and to explain further or clarify disputed points. In order to do this the asylum-seeker must be given an adequate statement of the reasons why his or her claim was rejected. UNHCR staff told Amnesty International that at the commencement of the second

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<sup>6</sup> In putting forward guidelines for governments examining asylum claims, UNHCR has stated that all asylum-seekers should receive preliminary counselling in the appropriate language by non-governmental organizations (NGOs), the government or UNHCR, or some combination of those three.

<sup>7</sup> The UNHCR office in Ankara has two officers to provide counselling and assistance on protection, medical and social issues at the request of asylum-seekers and refugees, and its staff regularly make visits for this purpose to the towns outside Ankara where asylum-seekers are required to reside. The UNHCR office also has a lawyer who is responsible for providing counselling and assistance on protection issues generally and on all matters involving the Turkish police. But, in addition to such counselling on issues relating to the problems which refugees and asylum-seekers face in Turkey, Amnesty International believes it is essential to provide asylum-seekers with counselling and advice about the way the UNHCR refugee determination procedure works, in advance of their interview, in order that they are fully aware what is expected of them in that procedure and what sort of information they will be expected to provide in support of their application.

<sup>8</sup> For example, in refugee determination procedures operating under the Comprehensive Plan of Action (CPA) in several first asylum countries in Asia, UNHCR has either itself provided "pre-screening" counselling or has taken steps to ensure that it is available.

interview the legal officer explains to the asylum-seeker why the case has been initially rejected; however, it is not clear whether this is done in all cases, and, in any event, cannot be a substitute for setting out in writing and providing the asylum-seeker in advance with the reasons why the case has been rejected<sup>9</sup>. In many countries it is an accepted requirement of a fair administrative procedure that written reasons for rejecting a claim at first instance are provided in order to allow for an effective appeal.<sup>10</sup>

#### **4.3Iranians who have come via Iraq**

Many Iranian asylum-seekers enter Turkey through Iraq. In some cases they travel directly through northern Iraq as this is the easiest way for them to get to Turkey from Iran. In other cases, they might have fled into Iraq and remained there for a period of time before entering Turkey. There are many thousands of Iranian refugees in Iraq, many of them Iranian Kurds or members of the PMOI, and approximately 20,000 of them are registered as refugees with the UNHCR.

Over the past two years Amnesty International has been in contact with dozens of Iranian asylum-seekers who arrived in Turkey from Iraq, and whose cases were rejected by the UNHCR on the grounds that they were already registered as refugees with the UNHCR in Iraq or that they should have sought protection from UNHCR in Iraq. As far as Amnesty International is aware, such cases are closed without a possibility of review. In early 1992, after raising such cases with the UNHCR, Amnesty International was informed by the UNHCR in Geneva that Iranian asylum-seekers would not be refused protection in Turkey simply because they had come to Turkey via Iraq. However, in November 1993 Amnesty International met with several Iranian asylum-seekers who had come to Turkey from Iraq and who had recently received letters from the UNHCR informing them that UNHCR was "unable to assist you in Turkey .... The only assistance we can give you is for your return to the country where you have lived since leaving your country of origin." These Iranians were former members of the PMOI who had left that organization, but Amnesty International also interviewed other Iranian asylum-seekers who had received similar letters and who were members or former members of Iranian Kurdish opposition groups.

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<sup>9</sup> On this point UNHCR has indicated in a letter to Amnesty International that they are reluctant to provide written reasons for refusal, and that, in their view, the oral explanation at the commencement of the second interview is sufficient.

<sup>10</sup> The Committee of Ministers of the Council of Europe, in Recommendation No. R (81) 16 (on the harmonization of national procedures relating to asylum), has recommended that in the event of a negative decision an asylum-seeker "... shall be informed in an appropriate manner of the reasons on which the decision is based and of the possibilities of appeal or review ..." (emphasis added).

The UNHCR office in Ankara indicated that cases of Iranians coming from Iraq were considered on a case-by-case basis, but that those who had found protection in Iraq and were not at risk in Iraq would, in line with accepted UNHCR policy, be required to return to Iraq. The Executive Committee of the UNHCR has concluded that refugees who have already found protection in one asylum country may be returned to that country if "they are protected there against *refoulement*, and they are permitted to remain there and to be treated in accordance with recognized basic human standards".<sup>11</sup> However, protection against *refoulement* should be both effective and durable and there are good reasons for many Iranian asylum-seekers to believe that such protection is not available in Iraq. The Kurdish authorities in northern Iraq have not been able to prevent Iranian Government agents from operating there and the Iranian armed forces have in recent months repeatedly attacked KDPI bases in northern Iraq. Further, although members of the PMOI would generally be safe in Iraq, given the Iraqi Government's support for the PMOI, former PMOI members who have now left the organization might justifiably feel at risk in Iraq. Moreover, the situation in Iraq remains extremely unstable and it is not possible to say with certainty whether Iranian refugees will continue to be able to find protection there. Therefore, Iranian asylum-seekers coming to Turkey from Iraq should not have their cases rejected by UNHCR simply on the grounds that they should seek protection in Iraq.

#### ***4.4 Resettlement: a matter of life and death***

Since the Turkish Government has always maintained that non-European refugees are not entitled to remain in Turkey, resettlement to another country is the only option available. People who are recognized by the UNHCR office as refugees have their cases referred by UNHCR to one of several embassies in Ankara which operate resettlement programs. While many thousands of Iraqis and Iranians have been resettled from Turkey over the years, these programs are carried out at the discretion of the governments concerned. The programs rarely focus solely on the risks facing the refugees who apply for resettlement; rather, decisions on who shall be granted resettlement are made on the basis of a combination of immigration criteria and refugee-related reasons. Thus it is often the case that recognized refugees are not accepted for resettlement, even though they risk serious human rights violations if returned to their countries of origin and are in an extremely insecure situation in Turkey. For such people, the risk of deportation increases as the months go by and their residence permits expire. Officials at the Ministry of Interior told Amnesty International that, as far as they were concerned, if a refugee could not be resettled the Turkish authorities could deport the person.

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<sup>11</sup> Conclusion No. 58 of 1989, paragraph (f)

#### **4.5 New arrangement: responsibility without obligation**

It now appears that even the current arrangement to allow for the UNHCR to conduct refugee recognition procedures for non-European asylum-seekers, with all its faults, is being disregarded by the Turkish authorities. Officials at both the ministries of Foreign Affairs and Interior indicated to Amnesty International that they had held discussions in August 1993 with UNHCR with a view to making new arrangements for the treatment of non-European asylum-seekers. The officials told Amnesty International that the Turkish authorities, and not the UNHCR, were responsible for deciding which asylum-seekers had "genuine" claims; this was necessary to ensure "Turkish sovereignty" was maintained. According to the officials, the UNHCR must refer all asylum-seekers who approach the UNHCR office to the police for registration and the police will interview them to determine if their claims are "genuine". Those with "genuine" claims will be referred to UNHCR for assistance in resettlement, and UNHCR would be able to ask for a "second look" at cases rejected by the Turkish authorities. When officials at the Ministry of Interior were asked whether asylum-seekers in possession of a UNHCR letter indicating their case was under consideration or had been accepted were protected against forcible return, the officials said that UNHCR had no right to make a decision on who could be allowed to remain in Turkey if that decision was different from the one made by the Turkish authorities. Amnesty International was also told by these officials that the UNHCR office "might not find this arrangement workable". UNHCR officials indicated that there were discussions with the government on arrangements for determining refugee status but, as far as UNHCR was concerned, no new system had yet been agreed.<sup>12</sup>

At present, it is not clear whether new arrangements have been established. While the government insisted that it was responsible for making decisions on asylum claims, asylum-seekers who had recently registered with the police did not report that the police were interviewing them about their reasons for fearing to return to their countries of origin. Rather, the registration interview with the police seemed to be intended to gather basic biographical information. In a few cases, Iranian asylum-seekers said that the police had asked them to indicate their political affiliation or grouping, but they did not report that there was any real attempt to gather relevant information concerning their asylum claim.

The government's insistence on its own responsibility for making decisions on asylum claims might be a pretext for diminishing the role of the UNHCR office in Ankara and the protection function inherent in that role. Amnesty International fears that the Turkish

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<sup>12</sup> In a letter to Amnesty International, UNHCR indicated that any reconsideration of respective UNHCR and Turkish Government involvement in refugee recognition procedures would be done in light of the safeguards specified in relevant Conclusions of the UNHCR Executive Committee and other international instruments of refugee law.

Government is seeking a free hand to forcibly return refugees and asylum-seekers by asserting its own responsibility for such decisions – unconstrained by the views of the UNHCR office. These fears are based on the fact that while the government is insisting that it alone, as a matter of sovereignty, has the right to make decisions on refugee status for non-European asylum-seekers, it also insists that it will not lift the geographic limitation and thus accept to be bound by the international standards governing such decisions. Until now, asylum-seekers whose cases were under consideration or who had been recognized as refugees by UNHCR did enjoy some protection against forcible return (although even in such cases protection was not assured); by asserting the Turkish Government's role, and diminishing the role of UNHCR, the government apparently believes it can more readily disregard UNHCR decisions – as shown by its assertion that its own decisions take precedence. In this regard, Amnesty International has learned that in late December 1993 several Iraqi asylum-seekers who were approaching the UNHCR office in Ankara to register asylum claims were arrested by the Turkish police in front of the UNHCR office and, despite UNHCR protests, were forcibly returned to Iraq.

The Turkish Government is entitled to assert its right to be responsible for making decisions on applications for asylum; indeed, in most countries it is the government, and not the UNHCR, which operates asylum procedures. However, such procedures must be fair and satisfactory and provide for adequate safeguards so that people at risk are identified. Amnesty International is concerned that an interview by the police does not provide a fair and satisfactory asylum procedure: the police do not have any expertise or training in international refugee law or on the human rights situation in the countries the asylum-seekers come from; there is no provision for a review of a negative decision; most importantly, there is no legal basis for the process which recognizes the rights of refugees and asylum-seekers – in particular their right not to be forcibly returned to countries where they risk serious human rights violations. Also, asylum-seekers are unlikely to feel confident enough to fully explain their case to the police in Turkey. As the UNHCR *Handbook on procedures and criteria for determining refugee status* (issued at the request of the intergovernmental Executive Committee of UNHCR) indicates:

"A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case."<sup>13</sup>

This problem is obviously exacerbated when there are consistent reports of harassment and intimidation of asylum-seekers by the police.

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<sup>13</sup> Paragraph 198

## 5. Return of asylum-seekers to Turkey from European countries

Amnesty International continues to receive reports that asylum-seekers who travel through Turkey on their way to other European countries are forcibly returned to Turkey by the authorities in the countries they arrive in or attempt to enter. For example, there have been several instances in the past year where the Greek authorities have refused to permit Iraqi asylum-seekers to enter Greece from Turkey or have forcibly returned Iraqi asylum-seekers to Turkey. Amnesty International was also told by people working with asylum-seekers and refugees in Istanbul that there had been several cases reported where the Greek authorities had summarily deported asylum-seekers to Turkey near the border with Alexandroupolis by taking them by boat across the river marking the border – although away from any recognized border crossing – and leaving them on the Turkish side. This reportedly happened to a Sudanese man who had been recognized as a refugee by the UNHCR office in Athens.

Amnesty International opposes the forcible return of any asylum-seeker to a third country unless they would be assured of effective and durable protection in that country. This would at a minimum require assurances that the asylum-seeker will be admitted to a full and satisfactory asylum procedure. No such procedure exists for non-European asylum-seekers in Turkey. The procedures operated by UNHCR do not provide effective and durable protection since the government has on numerous occasions forcibly returned asylum-seekers whose cases were under consideration by UNHCR and also people who were recognized as refugees by the UNHCR. Moreover, it appears that the informal arrangement which allows for the UNHCR to operate such procedures is being disregarded by the government. Finally, there is no basis in Turkish law for recognizing the rights of asylum-seekers and refugees from non-European countries. Therefore, no non-European asylum-seeker who may have been in or travelled through Turkey before reaching another potential asylum country should be returned by that country to Turkey.



## **6. Recommendations**

### ***A: Recommendations to the Turkish Government***

1. The Turkish Government must scrupulously observe the internationally-recognized principle of *non-refoulement*, and accordingly should not forcibly return any person to a country where he or she risks serious human rights violations.
2. To ensure effective protection for non-European refugees and asylum-seekers, the Turkish Government should remove the geographic limitation which it maintains to the 1951 Convention relating to the Status of Refugees and ensure that the necessary legal measures are taken to formally recognize their rights under Turkish law.
3. The Turkish Government should establish fair and satisfactory procedures for the determination of asylum claims, including:
  - the establishment of a specialized body, composed of persons with expertise in international refugee law and international human rights law, with responsibility for interviewing asylum-seekers and making decisions on their claims;
  - provision for an effective review of a negative decision;
  - provision for legal advice and assistance for asylum-seekers.
4. Until the Turkish Government removes the geographic limitation, introduces the necessary legal measures to ensure respect for the rights of non-European refugees and asylum-seekers and establishes fair and satisfactory asylum procedures, it should formally indicate that it will respect UNHCR decisions and not forcibly return UNHCR-recognized refugees or asylum-seekers whose cases are under consideration by UNHCR. All asylum-seekers must be allowed to freely approach the UNHCR to register an application for recognition as a refugee.
5. Agreements with other countries concerning issues relating to border security or extradition must not conflict with international human rights obligations; therefore, the Turkish Government should give public assurances that its agreements with Iran and Tunisia on these issues will neither obstruct individuals from exercising their right to seek asylum in Turkey, nor allow for the forcible return of any person to a country where he or she risks serious human rights violations.

### ***B: Recommendations to the UNHCR***

6. The UNHCR should ensure that appropriate counselling and advice is provided on a systematic basis to all asylum-seekers ahead of their interview to examine their claim for refugee status. The counselling should be conducted in person on an individual basis and should include advice on the recognition procedures followed by the office, asylum-seekers' rights in those procedures and the criteria used in determining that a person is entitled to protection as a refugee.
7. All asylum-seekers whose cases are rejected by UNHCR after a first interview, including those whose cases are determined to be "manifestly unfounded", should receive an automatic review of the decision, including a second interview conducted by a different legal officer.
8. All asylum-seekers whose cases are rejected by UNHCR after a first interview, including those whose cases are determined to be "manifestly unfounded", should be given written reasons setting out the grounds on which the claim was rejected in sufficient detail to allow for an effective opportunity to challenge the decision.

### ***C: Recommendations to other countries***

9. Non-European asylum-seekers are not assured of effective and durable protection in Turkey against being returned to their countries of origin, and therefore should not be returned to Turkey by other countries.
10. Countries offering resettlement opportunities for refugees in Turkey should make every effort to ensure that cases considered for resettlement are dealt with quickly and that decisions are based on the risks faced by the refugees with due regard given to the insecure situation of non-European refugees in Turkey.