



TÜRKİYE

JOINT SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

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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 RIGHTS OF THE CHILD
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ISSUES RELATING TO IMMIGRATION DETENTION OF CHILDREN

The International Refugee Rights Association (IRRA) and the Global Detention Project (GDP) welcome the opportunity to provide information relevant to the fourth and fifth periodic review of Türkiye with respect to the implementation of the UN Convention on the Rights of the Child during its 93rd session.

This submission focuses on the state party's laws and practices concerning detention of children for immigration-related reasons and is made in light of the Committee on the Rights of the Child's (CRC) authoritative General Comment No. 5 on migrants' rights to liberty and freedom from arbitrary detention,¹ as well as the joint CRC/Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) General Comment No. 23 (2017)/No. 4 (2017) on "State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return."²

1. INTRODUCTION

1.1 This submission is made under Article 45(a) of the Convention on the Rights of the Child ("CRC") and mainly addresses implementation of CRC Article 37 (b)(c)(d) on deprivation of liberty. The submission takes into account the joint CRC/CMW General Comment No. 23/No. 4 which states that "child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice."³

¹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "General Comment No. 5 (2021) on Migrants' Rights to Liberty and Freedom from Arbitrary Detention," CMW/C/GC/5, 23 September 2021, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-5-2021-migrants-rights-liberty>

² UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return," CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, <https://www.refworld.org/docid/5a12942a2b.html>

³ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return," CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, <https://www.refworld.org/docid/5a12942a2b.html>

- 1.2 Türkiye currently hosts the largest number of refugees in the world—nearly 3.8 million according to UNHCR.⁴ Of these, 3.4 million are Syrians who are under temporary protection,⁵ while an additional 320,000 individuals from other countries—mainly Afghanistan, Iraq, and Iran—are under various other legal frameworks.⁶ Notably, 1.7 million of the refugees in the country are children.⁷
- 1.3 With 30 detention centres, Türkiye has one of the largest immigration detention systems in the world.⁸ The situation that immigration detainees face in these facilities varies in terms of physical conditions, services provided, and the presence of qualified personnel.
- 1.4 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.
- 1.5 Accessing information about foreigners detained in Türkiye is difficult due to the lack of a centralised system. Lawyers and families lack even the most basic information such as the detainee's location, which is necessary to provide effective legal services. Without proper legal support, detainees often miss deadlines to appeal administrative detention decisions.
- 1.6 Authorities regularly fail to provide adequate information to detainees, and language barriers make it difficult for non-Turkish speakers to understand their rights and procedures. This also makes it hard for refugees to access legal support, leading to further rights violations.
- 1.7 Turkish law (Law 6458 on Foreigners and International Protection⁹ (LFIP) (2013) Articles 57 and 71) provides for the consideration of non-custodial measures as part of immigration adjudication procedures. These measures can include residence at a designated address and reporting requirements. On 14 September 2022, the Ministry of Interior adopted the Regulation on Alternative Obligations to Administrative Detention (RAOAD). However, according to observers, these measures are not widely used. Furthermore, as elaborated below, there are still gaps in Turkish law in upholding the principle of non-detention of children under any circumstances.

⁴ UNHCR Türkiye, "Refugees and Asylum Seekers in Turkey," <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey>, accessed 11 April 2023.

⁵ Presidency of Migration Management, "Temporary Protection," <https://en.goc.gov.tr/temporary-protection27>, accessed 11 April 2023.

⁶ UNHCR Türkiye, "Refugees and Asylum Seekers in Turkey," <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey>, accessed 11 April 2023.

⁷ UNICEF, "Humanitarian Action for Children (HAC)," <https://www.unicef.org/turkiye/en/humanitarian-action-children-hac>, accessed 11 April 2023.

⁸ The Presidency of Migration Management, (PMM), "Removal Centers," <https://en.goc.gov.tr/removal-centres>

⁹ For an unofficial English translation of the LFIP, see https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP_ENG_DGMM_revised-2017.pdf

Earthquake Damage

- 1.8 On 6 February 2023, two devastating earthquakes hit Türkiye. According to official statements, more than 45,000 people lost their lives and over 100,000 were injured.¹⁰ It is noteworthy that 1.7 million refugees and migrants were living in the region affected by the earthquakes. The earthquakes also impacted Türkiye's detention system, with seven detention centres located in the affected area. Some of the detention centres were heavily damaged. However even after the earthquake, Turkish authorities have continued to detain migrants, including children, in the earthquake zone or transferred them to other places.¹¹
- 1.9 Following the earthquake, there was an increase in anti-refugee discourse amongst far-right groups,¹² fuelled by false reports of looting. Consequently, some refugees and migrants were reported to have been mistreated during relief efforts. There were also reports of human rights violations in some detention centres. Lawyers state that some of their clients who were transferred out of the detention zone to detention centres elsewhere in the country were beaten because they were perceived to be looters.

2. BACKGROUND

- 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 the country's 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 that 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. In preparing the new law, authorities took into account the general "EU acquis" and also tried to ensure compliance with decisions made by the European Court of Human Rights (ECHR).
- 2.3 In October 2016, Türkiye issued Decree 676, which expanded the grounds for deporting people who are in the process of applying for international protection, resulting in increased deportations of refugees and asylum seekers to countries like Afghanistan, Syria, and Iraq.¹³ In July 2019, authorities in Istanbul announced

¹⁰ Anadolu Agency, (AA), "Death toll from earthquakes in Türkiye passes 45,000," <https://www.aa.com.tr/en/turkiye/death-toll-from-earthquakes-in-turkiye-passes-45-000-agency/2833951>

¹¹ International Refugee Rights Association & Global Detention Project, "The Impact of the Türkiye/Syria Earthquake on Immigration Detention Centres and Detainees," <https://www.globaldetentionproject.org/statement-impact-of-turkiye-syria-earthquake-on-immigration-detention-centres-and-detainees>

¹² İ. Tatlı, "Deprem üzerinden kışkırtılan nefret söylemi ve ayrımcılık deprem kadar yıkıcı olabilir," *Independent Türkçe* (18 February 2023), <https://bit.ly/3MHeVy7>

¹³ Amnesty International, "Turkey: Thousands of Afghans Swept Up In Ruthless Deportation Drive," 24 April 2018, <https://www.amnesty.org/en/latest/news/2018/04/turkey-thousands-of-afghans-swept-up-in-ruthless-deportation-drive/>; Amnesty International, "Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal," 1 April 2016, <https://bit.ly/3UvK6yl>

- raids, stop-checks, and arrests of Syrian refugees registered in cities across the country.¹⁴ The raids were followed by summary deportations into northern Syria.¹⁵
- 2.4 Fearing a new influx of refugees into Türkiye after the US and other international forces pulled out of Afghanistan in mid-2021, authorities constructed a wall and surveillance system along its 295-kilometre border with Iran to prevent refugees from entering the country and summarily expelled thousands of Afghans, including women and children.¹⁶ Afghan families described repeatedly trying to cross the border from Iran into Türkiye's Van region, being caught by the police, detained, and deported.¹⁷
 - 2.5 Further problems face migrants designated as "foreign terrorist fighters" (FTF) by the Turkish authorities. When migrants are classified as terrorists by their countries of origin due to their political or religious beliefs, Turkish authorities generally accept such a designation without proper investigation or due process and assign what is known as FTF codes to these individuals. Migrants classified with FTF codes are considered a national security threat to Türkiye and are automatically detained, regardless of their residence status (some of them may have been living legally in Türkiye for years). FTF cases may be held in separate parts of detention centres and they are treated in a discriminatory way by the authorities. Lawyers representing FTF cases also face barriers and discriminatory attitudes. Migrants classified as FTF face constant threats of deportation and are rarely informed about their rights and legal remedies.¹⁸
 - 2.6 As of 2022, a new detention framework has been established for Syrian asylum seekers in "Temporary Shelter Centres." Originally, these centres were established to accommodate Syrians arriving in the country in large numbers and Syrians who could not afford to live independently in Turkish cities. However, the function of "temporary shelter centres" has recently changed.
 - 2.7 Since there is currently no large-scale migration from Syria to Türkiye, new Syrian arrivals are obliged to individually apply for temporary protection status. During the assessment process, they are taken to "Temporary Shelter Centres." Syrians without temporary protection documents and those who "voluntarily" returned to Syria and then came back to Türkiye are also now detained in these centres.
 - 2.8 Conditions in the facilities are reported as being prison-like: lawyers report that they have not witnessed anyone being released, even when they have been granted temporary protection status. The centres appear to be used as a

¹⁴ Q. Amameh and T. Rollins, "Syrian Refugees in Istanbul Nervous Over Raids, Arrests by Turkish Authorities," *The National*, 19 July 2019, <https://bit.ly/2ISblkl>

¹⁵ Q. Amameh and T. Rollins, "For Syrians in Istanbul, Fears Rise as Deportations Begin," *The New Humanitarian*, 23 July 2019, <https://www.thenewhumanitarian.org/news/2019/07/23/syrians-istanbul-fears-rise-deportations-begin>

¹⁶ EuroMed Rights "Afghan Refugees Stuck in Limbo at Turkish Border Need EU Protection," 31 August 2021, <https://euromedrights.org/publication/afghan-refugees-stuck-in-limbo-at-turkish-border-need-eu-protection/>

¹⁷ C. Gall, "Afghan Refugees Find a Harsh and Unfriendly Border in Turkey," *New York Times*, 23 August, 2021, <https://www.nytimes.com/2021/08/23/world/europe/afghanistan-refugees-turkey-iran-taliban-airport.html>

¹⁸ For more detailed information regarding FTF cases see the joint Global Detention Project and International Refugee Rights Association submission to the UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, 35th Session, September 2022, pages 9-12, <https://www.globaldetentionproject.org/turkiye-joint-submission-to-the-committee-on-the-protection-of-the-rights-of-all-migrant-workers-and-members-of-their-families>

deterrent for asylum seekers, coercing them to return to Syria rather than seek asylum in Türkiye.

- 2.9 Türkiye's Civil Courts of Peace contend that placement in "Temporary Shelter Centres" does not amount to administrative detention, despite the de facto deprivation of liberty that occurs within them. Syrians confined in these facilities are therefore not able to benefit from the rights granted to people who are officially administratively detained, including limits on the length of detention.

3. RELEVANT RECOMMENDATIONS FROM 2ND AND 3RD PERIODIC REVIEWS OF TÜRKIYE BY THE COMMITTEE ON THE RIGHTS OF THE CHILD

- 3.1 In the 2nd- 3rd periodic reviews of Türkiye (16th session, 29 May–15 June 2012), the Committee on the Rights of the Child raised concerns about the geographic limitations to the 1951 Refugee Convention, under which only asylum seekers from European countries are granted refugee status, thus reducing protection to refugee children from non-European states. It also raised concerns about the challenges experienced by asylum-seeking and refugee children, including the requirement for residence permits in order to access basic assistance such as healthcare and education, the detention of children alongside adults, and the lack of interpreters.¹⁹ As this submission details, many of these problems have still not been addressed.
- 3.2 The Committee encouraged Türkiye to consider withdrawing the geographical limitation on the application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in order to allow non-European child refugees to be granted refugee status. It recommended that Türkiye:
- Conduct an assessment of the challenges experienced by asylum-seeking and refugee children with regard to accessing health, education, and social services, and urgently address such challenges.
 - Ensure that every effort is made to identify children who require special support on their arrival in the State party and consider providing adequate psychological assistance to them. To achieve this, the Committee encouraged the State party to seek technical assistance from UNHCR.²⁰
- 3.3 The Committee also raised concerns regarding the implementation of the principle of non-discrimination with regards to refugee and asylum-seeking children.²¹ The Committee recommended that Türkiye take appropriate measures to prevent and combat discrimination.²² This recommendation has become

¹⁹ The Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention," <https://www.ohchr.org/en/documents/concluding-observations/crccturco2-3-concluding-observations-turkey>

²⁰ The Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention," <https://www.ohchr.org/en/documents/concluding-observations/crccturco2-3-concluding-observations-turkey>

²¹ The Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention," <https://www.ohchr.org/en/documents/concluding-observations/crccturco2-3-concluding-observations-turkey>

²² The Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention," <https://www.ohchr.org/en/documents/concluding-observations/crccturco2-3-concluding-observations-turkey>

particularly relevant because of the increase in racism, racial discrimination, and xenophobia in the last ten years since the arrival of Syrian refugees in the country. Far-right tendencies in the discourse of political parties have fuelled hate against refugees and migrants.²³ As general elections approach, the forcible repatriation of refugees becomes a promise of politicians to attract popular votes.²⁴

4 RELEVANT RECOMMENDATIONS FROM THE 3RD UNIVERSAL PERIODIC REVIEW OF TÜRKİYE

During the 3rd cycle of the Universal Periodic Review of Türkiye (44th session, 15 June – 3 July 2020)²⁵, member states issued several recommendations relevant to Türkiye's immigration practices, many of which can have relevance to detained children. These included recommendations for Türkiye to:

- 4.1 Strengthen access to legal assistance and interpretation for asylum seekers at border points and migration centres (Mexico);(para. 45.301)
- 4.2 Ensure that all asylum seekers and migrants within the territory of Türkiye enjoy their basic human rights (Afghanistan);(para. 45.295)
- 4.3 Ensure that all allegations of arbitrary detention, torture and inhumane treatment by the security forces are duly investigated (Italy)(para.45.130)
- 4.4 Establish independent mechanisms for reporting and investigation of allegations of unlawful detention, torture and inhumane treatment at the hands of police and security (Estonia) (para. 45.38)
- 4.5 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)

5 INFORMATION FROM THE INTERNATIONAL REFUGEE RIGHTS ASSOCIATION (IRRA) ON DETENTION OF CHILDREN

- 5.1 The following information is based on IRRA interviews with lawyers representing migrants and refugees in immigration detention facilities in Türkiye. The IRRA research and reporting department conducted interviews with eight migration lawyers to develop an up-to-date picture of the detention of children in the country.
- 5.2 Türkiye is party to several conventions and regulations that aim to protect children's rights, including the United Nations Convention on the Rights of the

²³ A. Demir, "Siyasetin göçmen söylemi: Dünün "misafirleri" bugünün "istilacıları"... Türkiye'nin sığınmacı politikası sertleşiyor," *Independent Türkçe*, 19 April 2022, <https://bit.ly/41sbSOj>

²⁴ A. Demir, "Siyasetin göçmen söylemi: Dünün "misafirleri" bugünün "istilacıları"... Türkiye'nin sığınmacı politikası sertleşiyor," *Independent Türkçe*, 19 April 2022, <https://bit.ly/41sbSOj>

²⁵ Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Turkey," A/HRC/44/14, 24 March 2020, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F14&Language=E&DeviceType=Desktop&LangRequested=False>

Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), The European Convention on Human Rights (ECHR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

- 5.3 The overarching principle in Turkish law regarding detention and children is "the best interest of child."²⁶ According to this principle, administrative and legal bodies are required to prioritise the best interest of children in every phase of the immigration system. Nevertheless, the law and practice with regards to this principle is not compatible with international standards and Turkish authorities continue to frequently detain children.
- 5.4 In the context of administrative detention of children, the joint General Comment No. 23 of the CRC and No. 4 of the CMW states: "*the Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children.*"²⁷
- 5.5 Türkiye, however, has not incorporated this standard into its laws and practice. Law 6458 on Foreigners and International Protection (LFIP) (2013)²⁸ does not explicitly prohibit the detention of children under any circumstances. Instead, the LFIP states that families, including those with children, should "*be accommodated in separate areas*" in detention centres and that "*the Ministry of National Education shall take the necessary measures to ensure that children have access to education.*"
- 5.6 Allowing children to be detained with their families does not meet the international standard of the best interest of the child. As emphasised by joint General Comment by CRC and CMW, "*when children are accompanied, the need to keep the family together is not a valid reason to justify the deprivation of liberty of a child. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family.*"
- 2.10 On 14 September 2022, the Ministry of the Interior adopted the Regulation on the Alternative Obligations to Administrative Detention (RAOAD).²⁹ This defines a category of "persons with special needs" which includes, amongst others, unaccompanied children and single mothers/fathers with children. Alternative

²⁶ LFIP Article 59 (1) c, Article 66 (1) (a).

²⁷ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, "Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return" p.9, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-comment-no-4-cmw-and-no-23-crc-2017>

²⁸ For an unofficial English translation of LFIP, see https://www.unhcr.org/tr/wp-content/uploads/sites/14/2017/04/LoFIP_ENG_DGMM_revised-2017.pdf

²⁹ Regulation on the Alternative Obligations to Administrative Detention (RAOAD), <https://www.resmigazete.gov.tr/eskiler/2022/09/20220914-3.htm> (an English translation of the regulation is not yet available)

obligations to administrative detention must be considered for individuals classified as "persons with special needs." Children with both their parents are excluded from this category and can therefore be detained. This represents a significant gap in the protection of children under Turkish law.

- 5.7 The children of persons with FTF codes are particularly affected by this practice. It is common that the children of migrants classified as FTF cases are also assigned FTF codes, meaning that they are also designated as foreign terrorist fighters and detained with their families. The assessment for FTF codes is not age-sensitive. Once classified as FTF cases, even if the code is removed in Türkiye, it may remain on the individual's records and can be tracked by intelligence agencies. Classification of children as FTF cases can negatively impact their lives long after they are released from detention.
- 5.8 Children continued to be detained in Türkiye even after the February 2023 earthquake. IRRA collected information indicating that 39 women and 27 children were being held at the Gaziantep Oğuzeli Detention Centre, which is located within the earthquake zone.³⁰ Non-nationals continued to be held in detention centres with no official confirmation of their structural stability or the conditions that detainees face inside.³¹
- 5.9 Unaccompanied children cannot legally be subjected to administrative detention under any circumstances. Article 66 (1) (a) of LFIP states that: "*The best interest of the child shall be the primary consideration in all actions related to unaccompanied children.*" Article 66 (1) (b) further provides that unaccompanied children may be accommodated only in a suitable place: "*The Ministry for Family and Social Services shall place unaccompanied children in suitable accommodation facilities, in the care of their adult relatives or, a foster family, taking the opinion of the unaccompanied child into account.*" While there have been some positive developments in the implementation of this rule serious problems remain.
- 5.10 Article 66 (1) (c) states that "*Foreigners whose physical appearance does not correspond to the age they declare will be subjected to age determination at healthcare institutions and those who are determined to be under the age of eighteen shall be handed over to the provincial directorates of the Ministry of Family and Social Services.*" Nevertheless, lawyers state that some children may declare their age to be higher than it is in order to avoid being separated from their families or groups with whom they travelled. Although the LFIP allows authorities to determine the age of children in cases where there is serious doubt regarding the accuracy of the information provided by the applicant, in practice, a child who looks older than eighteen may still be subjected to detention.³²
- 5.11 Alarmingly, there is a crucial flaw in the registration and documentation process of unaccompanied children. Large groups detained by the Turkish police, particularly Afghan nationals, can often include minors. As the police department

³⁰ IRRA, "Report on the Detention Centres in the Earthquake Zone," (*forthcoming*). The information was collected on 20 March 2023.

³¹ International Refugee Rights Association & Global Detention Project, "The Impact of the Türkiye/Syria Earthquake on Immigration Detention Centres and Detainees," <https://www.globaldetentionproject.org/statement-impact-of-turkiye-syria-earthquake-on-immigration-detention-centres-and-detainees>

³² This issue was also reported by the Asylum Information Database (AIDA) in "Turkey: Country Report," 31 December 2020 update, https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf

considers the process of caring for unaccompanied minors to be a burden, it is reported that they register some unaccompanied children as being over eighteen, thus enabling their detention. The police can sometimes register unaccompanied children as relatives of another migrant, even if they are not biologically related. In these circumstances, children are no longer considered to be “unaccompanied” and are detained with the person with whom they were registered.

- 5.12 Although lawyers have reported that they are not aware of the presence of unaccompanied children in “Temporary Shelter Centres,” they have very limited access to these facilities and suspect that children with families are also being detained in them.

6 CONDITIONS IN DETENTION FACILITIES

- 6.1 Despite the difficulties for lawyers and NGOs to access detention centres, available information indicates that conditions can vary dramatically in terms of physical facilities, services provided, and the presence of qualified personnel.³³
- 6.2 The services in detention centres are regulated by Article 59 of the LFIP.³⁴ Article 4 of the Removal Centres Regulation also provides minimum standards for detention centres.³⁵
- 6.3 In addition, as a party to the ECHR and CAT, Türkiye must comply with standards set by the European Court of Human Rights and the UN Committee against Torture.
- 6.4 Detention facilities in Türkiye usually have three separate sections: one for men, one for women, and one for families. However, in detention centres with no

³³ Asylum Information Database (AIDA), “Turkey: Country Report,” 31 December 2020 update, p.127, https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf

³⁴ Article 59 of LFIP “In the removal centres:

a) emergency and primary healthcare services of which the foreigner is unable to cover the cost shall be provided free of charge; b) the foreigner shall be allowed access to and given the opportunity to meet with their relatives, the notary public, his/her legal representative and the lawyer, as well as access to telephone services; c) the foreigner shall be given the opportunity to meet with the visitors, consular official of their country of citizenship, and officials of the United Nations High Commissioner for Refugees; ç) the best interest of the child shall be considered, and families and unaccompanied minors shall be accommodated in separate areas; d) the Ministry of National Education shall take the necessary measures to ensure that children have access to education.

(2) Representatives of the relevant non-governmental organisations with expertise in the field of migration may visit the removal centres upon permission of the Directorate General.”

³⁵ Article 4: “The establishment, operation and operation of the Centres and the fulfilment of the services to be provided under this Regulation shall be carried out according to the following principles and procedures:

1. Protection of the right to life; 2. Human-centred approach; 3. Observing the best interests of the unaccompanied child; 4. Priority to applicants having special needs; 5. Confidentiality of personal information;
6. Informing the persons concerned about the operations to be performed; 7. Social and psychological strengthening of the housing; 8. Respect for the freedom of beliefs and worship of the people
9. Providing services to the residents without discrimination based on language, race, colour, sex, political thought, philosophical belief, religion, sect and similar reasons.”

separate family area, family members can be separated. In such cases, children stay with their mothers in the women-only section of the facility.

- 6.5 Many detention centres fail to provide recreation or outdoor play areas, and sometimes children do not even have separate beds to sleep in. For instance, according to an IRRA lawyer, a mother and her three children who were detained in Silivri Detention Centre had to sleep in the same bed for ten days.³⁶
- 6.6 Contrary to the clear provision of Article 59/ç of LFIP, practitioners state that there are inadequate education opportunities in every detention centre.

7 RECOMMENDATIONS

Based on the information above, the GDP and the IRRA make the following recommendations to the Committee on the Rights of the Child with respect to Türkiye's fourth and fifth periodic review:

- 7.1 In line with the joint CRC/CMW General Comment No 23/No 4 (2017), Türkiye should immediately cease detaining children and their families for reasons related to their migration status. Instead, appropriate non-custodial accommodation must be found for them. Children and their families currently in immigration detention, including those in closed "Temporary Shelter Centres," should be immediately released. Türkiye should review and amend its immigration laws and policies to bring them in line with the principle that detention is never in the best interests of the child and children should never be detained for migration-related reasons under any circumstances.
- 7.2 Türkiye should implement the CRC's recommendation during the 2nd and 3rd periodic review of Türkiye to withdraw its reservation relating to the geographical limitation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. This reservation results in important protection gaps for refugee children fleeing conflicts or persecution in the Middle East and elsewhere.³⁷
- 7.3 The definition of "persons with special needs" under the Regulation on the Alternative Obligations to Administrative Detention (RAOAD) should be amended to cover children accompanied by both parents. This would require the Turkish authorities to provide non-custodial measures to accommodate children and their families.
- 7.4 Turkish authorities should ensure that unaccompanied children are properly registered and age determination is carried out correctly. The practice of registering and detaining unaccompanied minors with unrelated migrants is illegal under Turkish and international law and must cease immediately. Similarly, registering unaccompanied minors as over the age of 18 to facilitate their detention with adults must also end immediately.
- 7.5 As recommended by the CRC in its second and third periodic review of Türkiye, the government should urgently address the challenges refugee children face in accessing health, education, and social services, and ensure that children who require special support, including psychosocial support, are identified. Currently, children held in immigration detention facilities do not have access to appropriate

³⁶ Interview with an IRRA lawyer practising in Istanbul, 14.03.2023.

³⁷ Global Detention Project, "Immigration Detention in Turkey: Trapped at the Crossroad Between Asia and Europe," <https://www.globaldetentionproject.org/immigration-detention-in-turkey-trapped-at-the-crossroad-between-asia-and-europe>

living conditions, health care, education, or opportunities for outdoor play and recreation. Non-custodial accommodation must be provided for children and their families that meet these standards.

- 7.6 Türkiye must ensure that measures are in place to allow all children to access to legal representation and assistance, and lawyers have unfettered access to their clients in detention centres.
- 7.7 Türkiye must establish and make available information about the age, gender, and legal grounds for all detention cases, including providing access to such information to legal advocates representing detained children and families.
- 7.8 Turkish authorities should refrain from applying FTF codes to the children of parents with these codes, especially as this classification can remain on their records for the rest of their lives. Children of parents classified with FTF codes should not be automatically detained with their parents. The best interests of the child must always be upheld and alternative non-custodial measures must be provided to accommodate children and their families.
- 7.9 Türkiye must cease operating “Temporary Shelter Centres” as de facto detention centres, and all cases of deprivation of liberty, regardless of the name or official designation of the facility in question, must be recognised as such and appropriate protections and procedural guarantees provided to all people who are deprived of their liberty.