

Seeking a "Better Life" in Turkey: Afghan Refugees' International Human Rights Condition in Turkey

Türkiye'de "Daha İyi Bir Yaşam" Peşinde: Türkiye'deki Afgan Mültecilerin Durumunun İnsan Hakları Açısından Değerlendirilmesi

Sanaa TALWASA^(*)

Abstract

Turkey hosts the vast majority, more than four million, of refugees in the world, and Afghans make up the second-largest group of this population. Turkey is considered both a transit, a gate toward European countries, and a destination country for refugees due to its geographical position. Nevertheless, the majority of asylum seekers in Turkey are Syrian who have moved into since 2011. The author claims that Turkey and international refugee supporters prefer Syrian refugees' legal protection, which causes Afghans to suffer massive violations of basic human rights during their journey to Turkey, after arrival, and while seeking refugee status in Turkey. This paper considers current condition of Afghan asylum seekers' international human rights in Turkey who are waiting for their final destination toward European countries. Similarly, this paper highlights the possible consequences of current strategies' application on Afghan refugees' human rights conditions based on UNHCR's most recent system. The author includes practical recommendations and suggestions for international society as well as Turkey to enhance the human rights condition of refugees, especially Afghans, since this concept requires global cooperation rather than only Turkey's efforts.

Anahtar Kelimeler: Afghan Refugees, Migrations, Refugee's protection in Turkey, Human Rights.

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(*) Emory University Law school Alumna, Department of Civil Rights-Ministry of Justice, Afghanistan
E-posta: sanaa.talwasa@alumni.emory.edu

ORCID ID: <https://orcid.org/0000-0002-6933-6632>

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Sosyal Bilimler
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Öz

Türkiye, dünya mültecilerinin önemli bir kısmına, dört milyondan fazla mülteciye ev sahipliği yapmaktadır ve Afganlar bu mülteci nüfusun ikinci en büyük grubunu oluşturmaktadırlar. Türkiye, coğrafi konumu sebebiyle mülteciler ve özellikle de Afganlar için hem Avrupa ülkelerine giden yolda geçit olan bir transit ülke, hem de bir varış noktası olan bir ülke olarak kabul edilmektedir. Bununla birlikte, Türkiye'deki sığınmacıların çoğu 2011'den itibaren gelmekte olan Suriyelilerdir. Yazar, Türkiye'nin ve uluslararası mülteci destekçilerinin Suriyeli mültecilerin yasal korumasına öncelik verdiklerini, ve bunun, Afganların Türkiye'ye yolculukları sırasında, vardıktan sonra ve Türkiye'de mülteci statüsü talep ettiklerinde büyük insan hakları ihlallerine maruz kalmalarına yol açtığını iddia ediyor. Bu makale, nihai hedef olarak Avrupa ülkelerine gitmeyi bekleyen Türkiye'deki Afgan sığınmacıların uluslararası insan hakları bağlamında mevcut şartlarını ele alıyor. Bu makale aynı zamanda, BMMYK'nın sistemine göre uygulanan en son stratejilerin insan hakları açısından Afgan mültecilerin şartları üzerindeki olası sonuçlarına dikkat çekiyor. Yazar, özellikle Afganlar olmak üzere mültecilerin insan hakları açısından şartlarını iyileştirmek üzere Türkiye ve de uluslararası toplum için pratik öneriler sunuyor, zira bu, yalnızca Türkiye'nin çabalarını değil, daha fazlasını, yani küresel işbirliğini gerektirmektedir.

Keywords: Afgan Mülteciler, Göçler, Türkiye'de Mültecilerin Korunması, İnsan Hakları.

Introduction

Afghans alongside Syrians, Iraqis, and Yemenis, constitute a huge group of asylum seekers fleeing their countries to western countries. This journey is full of challenges for all of them though recently tougher for Afghans. Turkey is considered both a transit and destination country for Afghans and this technically imposes different legal responsibilities on Turkey. However, the traditional protectors of Afghan asylum seekers, the international society, and European countries, prefer to consider much recent and global imminent concerns rather than Afghan long term internal conflicts. On the other hand, the Afghan Government has failed to protect the basic human rights of its nationals due to several challenges domestically and internationally. Thus, such situations provide a great gap

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for the protection of Afghan refugees’ rights in Turkey, who is committed to the way European countries deal with prioritizing Syrian refugees.

This paper aims to consider actual challenges against Afghan asylum seekers’ international human rights on their journey to Turkey, while living in Turkey, and receiving refugee status. Furthermore, the author describes the contents of the European Union-Turkey deal in 2016 and its effects on Afghans’ living conditions in Turkey. The contents of the paper reflect information gathered by a variety of national and international accurate and updated sources. For instance, Katie Kuschminder’s 2017 research based on actual surveys and interviews, and the annual reports (of 2017-2019) conducted by Refugees International Organization, that is “a global independent advocacy organization.” The efficiency of the European Union, the European Council, and the UNHCR reports were also highly informative and reliable. This essay could be qualified for extensive research to establish a mandatory policy both in Turkey and Afghanistan.

The first part of the article points to the plain definition of important inter-related concepts such as refugee, migrant, and international protections since there is an illusion of addressing Afghans based on these categories. The second part considers the Afghan refugees’ journey to Turkey as both a transit and a host country, and Turkish refugee protection mechanism. The third part discloses the conditions of Afghan refugees’ international human rights in Turkey. The fourth part aims to conclude the discussion with the UNHCR policy related to refugees and possible recommendations for increasing the protection of refugees’ international human rights in Turkey.

I. Primary Definitions of Relevant Concepts

It is essential to consider the legal definition of relevant concepts to the international human rights perspectives to understand the legal duty of the states and the real status of Afghans living in Turkey.

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1.1. "Migrants" and "Refugees"

There is no universally accepted definition of "migrants" in any international document. However, some specialized international documents have pointed to the category who migrated for work.¹ Different organizations have defined migrants as "any person who is outside a state of which he or she is a citizen or national, or, in the case of a stateless person, his or her state of birth or habitual residence."² Some render a broader definition of migrants, which covers "persons who leave or flee their habitual residence... to seek opportunities or safer and better prospects."³ It is also noticeable that migrants are covered by international humanitarian law as they are "protected persons"⁴ and may enjoy protection as "refugees." After the migration crisis in 2015, political authorities and media used the "economic migrants" label rather than "refugees"⁵ which rendered weak protection for such a category.⁶

On the other hand, a refugee is a person with well-founded fear of persecution in their home country because of their race, nationality, religion, social group, or political opinion, who is outside of their own country and

¹ The United Nations, *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (New York: General Assembly, 1990), art. 2(1).

² United Nations High Commission for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, (Geneva: UNHCR, 2001), 4.

³ International Federation of Red Cross and Red Crescent Societies (Geneva: 2009), 44.

⁴ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, (Geneva: Treaty Series, 1949), art. 4 and 73.

⁵ Heaven Crawly and Dimitris Skleparis, "Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe's "Migration Crisis," *Journal of Ethnic and Migration Studies Advance Access*, (2017): 25-29.

⁶ Roger Zetter, "Protection in Crisis: Forced Migration and Protection in a Global Era," *Migration Policy Institute*, (2015): 7-22.

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cannot return due to fear.⁷ The limited nature of the refugee definition in the convention has been criticized widely by scholars. Since the end of the twentieth century, three types of refugees came to be acceptable: refugees facing state displeasure due to their political activity; refugees facing state displeasure due to belonging to a particular cultural and social group; and refugees facing life danger due to the “states of conflicts, social, and political breakdown.”⁸ The third category faces a general breakdown that may have physical, social, political, and environmental aspects that make their life impossible back home, and country members to the convention need to provide similar legal protection of basic human rights for all refugees.

1.2. Afghans: “Migrants” or “Refugees”

Employment, education, trade, healthcare, and most importantly constant security concerns are the main reasons for Afghans to migrate for several decades. In other words, Afghan migration is not a result of a single reason but “a complex web of socio-economic, political, and personal factors”⁹ that make every individual’s case differently. Afghans used a *prima facie* claim to protection as refugees under international law, because of long-standing armed conflicts in the country; however, this is not the routine nowadays anymore.¹⁰

In this regard, Afghanistan’s neighbors have hosted the majority of Afghan refugees during the past years. In 2015, Pakistan and Iran, by

⁷ United Nations General Assembly, *Convention Relating to the Status of Refugees*, (New York: Treaty Series, 1951): 137, article 1.

⁸ Andrzej Bolesta, “The UN Convention Relating to the Status of Refugees: The Case for and Against Reform, Forced Migration and the Contemporary World: Challenges to the International System,” *Bialystok: Libra*, (2006): 17-35.

⁹ Angeliki Dimitriadi, “In Search of Asylum: Afghan Migrants in Greece,” *European Journal of Migration and Law* 19, (2017): 57- 76.

¹⁰ Katie Kuschminder, “Afghan Refugees Journeys: Onward migration Decision-Making in Greece and Turkey,” *Journal of Refugees’ Studies*, (2017): 1-22.

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hosting 1.5 million and 1 million respectively, beside a huge number of unregistered refugees, were the largest host countries for the Afghan refugees in the world.¹¹ Afghan refugees face severe challenges and violations of basic rights, arbitrary detention, risk of deportation, discrimination, and deprivation of the right to work and the right to education in Pakistan and Iran. These harsh challenges force them to leave the host countries and either return to Afghanistan or migrate somewhere else.

In 2015, Afghanistan was the second-largest group of refugees with 2.7 million;¹² at least 181,360 Afghans claimed asylum in EU countries, which was 400 percent more than the claims in 2014.¹³ However, Afghans' claims for refugee international protection status have been rejected and they have been deported mostly from European countries.¹⁴ Therefore, serious challenges against Afghans in Afghanistan, Pakistan, and Iran prompt them to choose western countries as a destination for a "better life" and the most convenient way to the west is considered through Turkey. Afghans have been recognized as "refugees," sometimes as "migrants," sometimes even as both, and many other times in between.¹⁵ Considering this complexity and no recent clue for solving this ambiguity, this article uses the term "Afghan refugees" to cover Afghan "refugees," "migrants," and those between these two concepts currently in Turkey, similar to the majority of papers and surveys on this topic.¹⁶

¹¹ UN High Commissioner for Refugees, *Global Trends: Forced Displacement in 2015*, (New York: 2016) 10-14.

¹² Ibid.

¹³ EUROSTAT, *Asylum and Managed Migration Database*, (Geneva: European Commission, 2016).

¹⁴ Liza Schuster and Nassim Majidi, "What Happens Post-Deportation? The Experience of Deported Afghans," *Migration Studies*, (2013): 221-240.

¹⁵ Crawly and Skleparis, "Refugees, Migrants, Neither, Both," 25-29.

¹⁶ Kuschminder, "Afghan Refugee Journeys," 1-22.

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1.3. *International Protections of Refugees’ Human Rights*

Every state has an international responsibility to ensure the protection of human rights of every person within its jurisdiction, irrespective of their nationality.¹⁷ Ad hoc, the legal status of being refugee, migrant, or asylum seeker and any illusion regarding determining the legal status of foreigner citizens fails to underestimate host states’ responsibility for protecting their rights. Besides, granting the right to enter a state should not violate the non-discrimination principle, namely discrimination based on race, sex, religion, political opinion, language, nationality or social origin, property, birth, or any other status.¹⁸ International law requires states to develop an efficient national legal framework in confirmation with international obligations toward refugees.

The basic right to live affirms protections as international legal responsibility for each departing, transit, host, and destination countries toward refugees and asylum seekers. This means that authorities have to preclude, search, and help refugees in danger, and the marine patrols’ officers need to go search for lost people in the water, and their dead bodies have to be sent back home to their families. Refugees and asylum seekers’ right of access to education, work, health service, social security services, and free mobility are protected under international law, and they need to be protected against arbitrary detention, deportation, discrimination, and cruel treatment by the host state.¹⁹

¹⁷ United Nations General Assembly, *International Covenant on Civil and Political Rights*, (New York: Treaty Series vol. 999, 1996): article 2.

¹⁸ United Nations Human Rights Committee, *International Covenant on Civil and Political Rights Committee, General Comment No. 15: On discrimination based on sex*, Aumeeruddy-Cziffra, S. & Others. *Mauritian Women v. Mauritius*, CCPR/C/12/D/35/1978 (New York: International Covenant on Civil and Political Rights Committee, 1978).

¹⁹ International Commission of Juris, *The practitioners’ Guide: Migration and International Human Rights Law* (Geneva, ICJ, 2014): 20-25.

II. The Challenging Journey of Afghans to Turkey

Recently, a significant number of Afghans have been tempting to enter Turkey's borders legally and illegally, and the majority of them aim to move toward Europe to seek asylum. This part of the paper reflects the journey challenges for Afghans, the reasons they stay or leave Turkey, and the current Turkish refugee mechanism.

2.1. Turkey: Transit and Destination Country for Afghans

Afghans' journey to EU countries occurs typically in three stages. The first stage is leaving Afghanistan, Iran, or Pakistan to Turkey. The second stage is moving to Greece from Turkey, either by walking through Bulgaria or crossing the Evros River. The third stage is moving to northern European countries, the final destination, from Greece.²⁰ "The Greek-Turkish sea border initially (in 2004-2009) and the land border eventually (in 2010-2012)" bore a huge number of arrivals from Turkey to Greece.²¹ Therefore, Turkey and Greece have been considered merely as transit countries when Afghan refugees start the journey; Turkey as a gate to Europe and Greece as a first entry point and a choice to claim asylum.

The migration reason for Afghan refugees and their international human rights' conditions in the transit countries have significant effects on choosing a destination country during their journey.

One of the most recent refugee journey piece of research and survey about Afghan refugees counts the elements involved in choosing a destination country as "(i) current subjective living conditions; (ii) employment; (iii) whether the refugees experience abuse in the current country; (iv) whether the refugees have previously attempted to migrate

²⁰ Kuschminder, "Afghan Refugees Journeys," 1-22.

²¹ Angeliki Dimitriadi, "In Search of Asylum," 57- 76.

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onwards from the current country; and (v) the country of refuge (being Greece or Turkey.)”²²

Furthermore, there are reasons for Afghan refugees’ decision to stay a transit country (Turkey) based on the survey conducted in 2017. Most Afghans lack any specific destination country as their final destination if their migration reason is only to flee from home and reach a safer place to live. However, Afghan refugees consider arrival to the UK, Germany, and Scandinavian countries as a successful migration journey.²³ The writer hypothesizes that the reasons to decide whether to stay or leave Turkey are as such:

- a. Refugees who tended to stay in one of the transit countries continue to stay in their current country.
- b. A longer stay of refugees in a country renders a high tendency of refugees to stay there.
- c. Refugees with good or very good living conditions will continue to stay in their current country.
- d. Refugees who are working aim to continue their migration to other European countries.
- e. Afghan refugees who have faced verbal or physical abuse prefer to continue their journey out of the current transit country.
- f. Afghan refugees who are certain about their destination will continue their journey to Northern European Countries.

As discussed above, some of the Afghan refugees (20 percent) choose Turkey as their destination country ending their long journey. This choice could be questioned from the international human rights perception whether they choose to stay in Turkey due to decent living conditions or they see themselves “stuck in transit.” The survey conducted in 2015

²² Kuschminder, “Afghan Refugees Journeys,” 1-22.

²³ Ibid.

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shows that Afghan refugees in Turkey do not feel “stuck in transit”²⁴ as some Afghans do in Indonesia.²⁵ Based on the survey, feeling secure and safe, employment opportunities, a chance for making more money, and family members living in Turkey, are the main reasons for Afghans to come and stay in Turkey as the destination country of their journey.²⁶

However, it is noteworthy to remember that the survey was conducted in 2015 and substantial changes have happened to affect refugees’ conditions. For instance, the Syrian civil war affected the Turkish market significantly both at the national and international level; the war brought a large number of Syrian refugees to Turkey as well. Aside, Turkey faced a coup attempt against the state institution in 2016 and the consequences continue up to now. Furthermore, the international organizations and the EU were more interested to handle Syrian refugees, which brought them to the bargaining table to consent on a deal with Turkey. Afghans who continue to stay in Turkey consist of illegal migrants or refugees without legal documentation or support, so they work in the black market of employment as “cheap workers.” The following part of the paper clarifies how the refugee mechanism in Turkey caused this challenge.

2.2. Turkey and Refugee Protection Mechanism

Turkey hosts more than 3.9 million Syrian refugees and 360,000 asylum seekers from other nationalities, which consists of more than 120,000 Afghans.²⁷ Turkey, as a signatory of the 1951 Geneva Convention, has a geographical limitation to apply the convention only to the European

²⁴ Ibid.

²⁵ Antje Missbach, “Troubled Transit: Asylum Seekers Stuck in Indonesia,” *ISEAS-Yusof Ishaq Institute*, (2015): 44-63.

²⁶ Kuschminder, “Afghan Refugees Journeys,” 1-22

²⁷ Izza Leghtas and Jessica Thea, “You Cannot Exist in This Place:” *Lack of Registration Denies Afghan Refugees Protection in Turkey* (Istanbul: Refugees International 2018): 1-12.

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Union member nations. This means that only the citizens of EU member countries can seek asylum and refugee protection rights in Turkey. In 2013, Turkey adopted its first immigration law, called “Law on Foreigners and International Protection” that entered into force in April 2014.²⁸

This law provides humanitarian protections in three categories: Full refugee protection (considered only for people coming from Europe); conditional refugee protection (typical refugees coming from any non-European country); and “subsidiary protection” (any refugees that face death, torture, discrimination, inhumane treatment and violence if they return). The recent package of protections covers Syrians automatically without applying or going through any further process, while other nationals, such as Afghans, must apply for the second package of protection, conditional protection. Refugees with either conditional and subsidiary protections are not eligible for citizenship in Turkey in the long term which means that the protections apply for a short time only and are different from refugees’ full protection.²⁹

Before September 2018, the United Nations High Commission for Refugees (UNHCR) was registering asylum claimants from different nationalities in Ankara, granting Refugees Status Determination (RSD). The non-Syrian refugees were assigned to “Satellite Cities” and The Provincial Directorate of Migration Management (PDMM) was responsible to help them settle in the cities. After a rising number of Afghans arrived in Turkey, the responsibility of their registration was transferred from the UNHCR to Turkey’s Directorate General of Migration Management (DGMM) in 2018. Currently, non-Syrian asylum

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²⁸ Rebecca Kilberg, “Turkeys Evolving Migration Identity,” *Migration Policy Institute* (2014): 2-5.

²⁹ Meltem Ineli Ciger, “Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey,” *Oxford Monitor of Forced Migration* 4(2), (2015): 28-36.

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seekers first interview with the PDMM, across all 81 provinces, and then will be assigned to “Satellite cities” where they must wait to interview with the DGMM to become eligible for the international protection, the conditional package of protections for Afghans.³⁰

This procedure is called “Temporary Protection Regulation” which forms the basis for UNHCR policy. Therefore, Afghan refugees need to be interviewed, registered, and then given official documents of identification which show their conditional international protection. Placed in the satellite cities, Afghan refugees wait for their applications to be evaluated and accepted for permanent refugee protection in a third country. This stage usually takes more than four years which depends on the individual cases’ conditions. This paper focuses on the international human rights condition of Afghan refugees in this stage of their journey, living in Turkey and waiting to receive permanent refugee protection from another state.

III. Afghan Refugees’ International Human Rights in Turkey

Refugees International Organization and several other scholars have published detailed reports and research papers regarding conditional refugees’ life while staying in the satellite cities through surveys and interviews. The hardest part of Afghan asylum seekers’ journey is waiting to receive conditional legal protection and the official identification cards, which can take several months. They face great challenges to their basic international human rights during their stay in the satellite cities such as discrimination, lack of work permits, lack of housing assistance, lack of any accurate information about asylum procedures, and lack of an appropriate health care system.³¹ Unfortunately, according to the most recent reports,

³⁰ Leghtas and Thea, “*You Cannot Exist in This Place*,” 1-12.

³¹ Izza Leghtas, *Refugees International Reports: “Except god, we have no one”: Lack of durable solutions for non-Syrian refugees in Turkey*, (Istanbul: Refugees International 2017): 1-12.

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conditions for Afghan refugees “worsened” in 2018.³² Here, the author focused only on a few basic rights of Afghan refugees’ international human rights protection in Turkey.

3.1. Right to Stay (Protection Against Deportation)

A rising number of Afghans seeking asylum was recorded in 2018 whose destination was not Turkey, but Europe. Besides, the Syrian crises render a large number of displaced, immigrants, and refugees in Turkey. Considering such conditions, Turkey decided to consider prompt action ending undocumented entry and decreasing asylum seekers in its jurisdiction and borders. The easiest solution for the government was to send asylum seekers back home without investigating whether their conditions require imminent international protection as refugees. Turkey deported 17,000 Afghans back to Afghanistan between January to June 2018³³ and these were called “voluntary returns” by the government of Turkey. However, Afghan refugees were misled or coerced into signing documents they could not understand and were sent back.³⁴ The illegal, expensive, highly dangerous, and time-consuming trips of Afghans were ended by a short flight from Turkey to Afghanistan and called “voluntary returning home.” Nevertheless, the deportation decision did not suffice, and Turkey demanded to build a wall along Turkey’s border with Iran that was completed in early spring, 2019.³⁵

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³² Leghtas and Thea, “You Cannot Exist in This Place,” 1-12.

³³ Mujib Mashal, “Their Road to Turkey Was Long and Grueling, but the Short Flight Home Was Crueler,” *New York Times*, 16 June 2018.

³⁴ European Council on Refugees and Exiles, *Turkey Responds to Increasing Arrivals of Afghans with Mass Deportation*, (Brussels: European Council, 2018; Amnesty International, *Turkey: Thousands of Afghans Swept Up in Ruthless Deportation Drive*, (London: Amnesty International, 2018); Leghtas and Thea, “You Cannot Exist in This Place,” 1-12.

³⁵ Orhan Coskun and Tuvan Gumrukcu, *Turkey to Complete Wall on Iranian Border by Spring 2019*, (Ankara: Reuters, January 2018).

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It is noteworthy that any detention and deportation of Afghans by the Turkish Police occurs in violation of international law and international human rights. The essential legal protection for refugees and asylum seekers is a well-established principle, the non-refoulement principle. This principle prohibits states from removing asylum seekers from their jurisdiction to return them to their countries when there is reasonable ground to believe that they will be subjected to persecution for several reasons.

3.2. Right to Documentation and Recognition

Obstacles and challenges against being registered and interviewed by the Turkish authorities keep Afghan refugees undocumented and unable for a long time to access the most basic services available for them. Privileging Syrian and European nationalities in providing legal documents, renders Afghan asylum seekers granting identification card process delayed. As discussed above, Afghans in Turkey need to be interviewed and registered, and then they will be granted official identification cards to be able to send their children to school, to use basic health care centers, and to get minimum financial aid from the government, such as a small amount of cash called “humanitarian aid,” paid by the government to keep houses warm in winter. Each stage of the procedure takes several days or even months and renders refugees undocumented and unprotected in this period.

After the refugees are settled in the defined cities, they need to report their address to the local police of the satellite cities every two weeks or every month, to keep their registration or authorization legal and updated.³⁶ This means that their international protection status, obtained with difficulty, could be terminated and they could face the danger of being deported if they fail to inform the local police office more than three

³⁶ Kuschminder, “Afghan Refugees Journeys,” 1-22.

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consecutive times. However, they are not permitted to leave the cities and move to other cities without a travel permit.

Unfortunately, the efforts do not bear fruit for a long time and refugees’ documentation goes out of date very quickly. The renewal of identification documents has its struggles and challenges to face and tolerate. For instance, Ali, an Afghan living in Erzurum says “Since July 2018, every month I have to renew ... We go, we give the old *kimliks* (the card) and it takes a week to get our new one. After three weeks we go back and do it again ... During the week without a *kimlik*, we don’t have anything. We are in constant fear; we can’t go to the doctor.”³⁷

On the other hand, marital status provides another base for discrimination against Afghan refugees in receiving official identification cards. Based on several interviews and reports, single Afghan men have been practically deprived of receiving the cards or renewals from PDMs in different provinces. They could be referred to different provinces’ PDMs to receive temporary protection status, but their claims and applications were either rejected or suspended for several months without any further information.

Being undocumented causes several challenges for Afghans in Turkey. For instance, undocumented people are not able to get the benefit of housing, health care, transportation, bank services ... which means a great challenge in continuing their lives. “The [PDMs] don’t register or give a *kimlik* if you’re not renting a flat,” Ismail, a single man, told Refugees International; “But if you’re new here and don’t have papers, how can you rent a flat? I slept in the park for six days.”³⁸

Despite the deprivation of basic services, undocumented Afghan refugees face the possibility of being detained in removal centers and subjected to deportation. This means that undocumented refugees are

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³⁷ Leghtas and Thea, “You Cannot Exist in This Place,” 1-12.

³⁸ Ibid.

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treated as illegal foreigners in the countries who the government arrests, detains, and departs as soon as they are recognized, which happens through police checkpoints both inside the cities and at the entrances of the provinces. Hence, single Afghan asylum seekers, who are undocumented, choose to travel to other Turkish cities illegally. Illegal mobility is far more expensive financially and more dangerous than legal mobility. Similarly, being undocumented deprives Afghans from appropriate public health care services. The alternative to public health care is the private sector, which is extremely expensive, or they have to handle the medical situation “without treatment” if they could not afford it.

Based on the law and local regulation, undocumented children cannot be deprived of their right to education. However, the lack of the required documents causes practical challenges for Afghan asylum seekers who want their children to have access to educational programs. Even if children are admitted to the schools, families can not benefit from financial aid. In other words, the government provides monthly cash payments in order to support and encourage families sending children to schools; but undocumented children and families are not eligible to receive the aid. Similarly, lack of documentation let Afghans suffer from the inaccessibility of legal protection and employment chances.³⁹

3.3. Right to Education

Turkey has an international obligation to provide education to all refugees to engage in Turkey’s higher educational system. Turkey is a signatory to the Lisbon Recognition Convention, the Convention on the Recognition of Qualifications concerning higher education area in the European Region. The government of Turkey tends to fulfill the obligation of protecting refugees’ right to education through public and private institutions. All refugees’ children have the right of access to school

³⁹ Ibid.

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and the protection of the right to education in basic and elementary educational institutions.⁴⁰

International reports indicate that higher education institutes provided a non-discriminatory higher education integration system, which provides similar opportunities for the refugees as if it does for other international students; they can be enrolled in higher education institutions if they are qualified.⁴¹ Turkey excuses some countries’ nationals from providing required documents because of their internal special situations calling them “special students” since 2014 and 2015⁴² coming from countries with war, annexation, and national disasters, such as Syria and Yemen; Afghan refugees are not eligible for this category.

It is noteworthy to mention that Turkey has provided two different procedures of “recognizing” and “equivalence” to evaluate international students’ educational documents. The “recognizing” acknowledges that the institution where the student studied is qualified as a higher education institution and the “equivalences” procedure acknowledges that a particular student’s degree is equivalent to the same degree in Turkey, offering the same qualifications.⁴³ Enrollment in an education system means a great hope for active engagement in the market that leads to naturalization, which is all in conformity with protecting refugees’ social and economic rights under international human rights.

Despite an equal chance for higher education enrolment procedures, Afghan refugees do not receive any further opportunity, as other refugees

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⁴⁰ Ayselin Yıldız, “Turkey” in *Integration of Refugees Students in European Higher Education Comparative Country Cases*, Yaşar University Publication, (2019): 77-95.

⁴¹ Ibid.

⁴² The Ministry of Higher Education, *The Republic of Turkey. Principles Regarding Horizontal Transfer from Yemen*, (Ankara: 2015), article 2.

⁴³ Zeliha Kocak Tufan, eds. *Handbook for Recognition of Diplomas and Equivalency*. (Ankara: Ankara University Publishing, 2018), 60-80.

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do in Turkey. Turkey works closely with international organizations to support refugees' right to education such as the UNCHR. Turkey hosts the largest DAFI program – UNCHR worldwide scholarship program-providing monthly stipends and living expenses for refugee students. Turkey provides scholarships with UNHCR partnership and Turkish Language Programs through YTB, HOPE, and SPARK programs for different students, which helps them to be qualified for higher education programs through learning the language. However, refugees from Syria and Yemen are the main focus of the programs; Afghan refugees are a forgotten category. Afghan refugees who seek to continue their education in Turkey need to bear the financial costs themselves.

3.4. Right to Work

Turkey has provided work permits for refugees with subsidiary protection, such as Syrian asylum seekers, to have access to the market with their identity documents without any further requirements. Refugees with conditional protections, Afghans, are not given the right to work in the market and they need to apply for a work permit in Turkey. They are also subjected to sectorial and geographical limitations in accessing the labor market. Those with conditional protection could be only formally employed in agriculture and livestock jobs,⁴⁴ and it takes at least two months for the authorities to review and respond to a work permit request.

Applying for a work permit, Afghan refugees must wait for six months after they apply for receiving international protection of refugees.⁴⁵ On behalf of conditional refugees, the employer needs to submit the work

⁴⁴ The Ministry of Labor, The Republic of Turkey, *Regulation on Work Permit of International Protection Applicants and International Protection Status Holders*, (Ankara: 2016): article 6, 84.

⁴⁵ Law No 6458, The Ministry of Labor, The Republic of Turkey, *Law on Foreigner and International Protection*, (Ankara, 2013).

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permit and assert that s/he failed to find a Turkish citizen as an employee for the position. The employer must have already hired five Turkish employees in the company, must pay the tax report, and promise that the salary is at least three times more than the gross minimum wage in the labor market. These conditions could be claimed to be in favor of employees' rights, but the monetary burden on employers discourages them to hire refugees with conditional protections. Thus, only a few refugees in this category are working in Turkey and most of them are busy in the informal sector facing abuse and mistreatment, such as longer working hours and lower wages than Turkish employees.

Afghan women face many more obstacles being a part of the workforce in Turkey. The significant obstacles are long delay and related problems in receiving refugee status or legal documentation which deprive them of every right in Turkey. In addition, lack of cultural awareness, lack of caretaking services, insufficient community centers, and lack of specialized information about the Turkish labor market, are all significant barriers for women to work. Turkey has provided a socio-economic support mechanism for refugee families settled in the satellite cities, such as paying a small amount of cash in winter (\$30 per member of the family) and (\$15) for families whose children attend school. However, the amount is inadequate to be considered as “sufficient income” for families' support.

It is noteworthy that a host country, such as Turkey, has the obligation of providing the chance for everybody to have access to just, decent, free chosen, and favorable work and enjoy an appropriate wage based on international documents. Specifically, Turkey is a member to the Parliamentary Assembly of the Council of Europe, confirms that “for asylum seekers and refugees (including those with subsidiary protection), the right to work is particularly important as it can enhance their sense of dignity, self-respect, and self-worth, and brings with it independence and financial self-sufficiency. Employment is also, more broadly, a crucial

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facet of integration and can help them recover from often traumatic experiences.”⁴⁶ In addition, Turkey is required to “take measures to foster self-reliance by pledging to expand opportunities for refugees to access education, healthcare and services, livelihood opportunities and labor markets, without discrimination among refugees and in a manner which also supports host communities.”⁴⁷ Based on the recent evidence one must conclude that Turkey has not been able to provide the required legal protection of Afghan refugees’ right to work.

IV. Final Considerations

As the Executive Committee of UNHCR points to the importance of international cooperation and solidarity toward refugees’ protection,⁴⁸ putting only Turkey in charge of refugees’ international human rights is irrational. The policies of the international society and organizations’ policies had an effect on Afghan refugees and it needs to be technically analyzed. Furthermore, it is significant to focus on the possible solutions and suggestions regarding the mentioned challenges against Afghan human rights as the responsibility of both the Turkish government and international actors.

4.1. EU- Turkey Deal and its Legacy

UNCHR is the responsible international organization for refugees which aims to pursue objectives specified in The Refugees Convention

⁴⁶ The Parliamentary Assembly of the Council of Europe, *Resolution 1994 on Refugees and the right to work*, (Geneva, 2014).

⁴⁷ United Nation General Assembly, *Resolution on New York Declaration for Refugees and Migrants A/RES/71/1, Annex I: Comprehensive refugees response framework. A/RES/71/1*, (New York: General Assembly, 2016), article 13.

⁴⁸ United Nations High Commission for Refugees, *Conclusion No. 112 (LXVII) on international cooperation from a protection and solutions perspective*, (New York: Executive Committee, 2016).

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through its supervisory role. In addition, asylum seekers expect and rely on UNCHR policies globally as refugee rights’ defender; however, this is not true for Afghans in Turkey anymore. In March 2016, the EU dealt with Turkey to “accept rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters.”⁴⁹ This means that migrants who are not eligible or not willing to apply for asylum will be returned to Turkey and instead of each returnee, the EU will let one Syrian to be resettled in the EU.⁵⁰ Further, the EU promised Turkey three billion Euros to spend on refugees’ protection programs and another three billion Euros through the end of 2018. The deal embraces merely Syrians as beneficiaries and renders Afghans forgotten in Turkey.

The UNHCR Guideline was considered inadequate through several international legal responses because of endangering basic international principles. This guideline authorized countries to accept asylum claims of special groups rather than individuals who could prove a “well-founded fear of persecution” to be eligible for refugee status. In other words, states are given the right to reject most asylum claims without any case by case consideration, merely because they are not related to a particular group although they are eligible. In this way, even criminally liable individuals can claim asylum and receive refugee status without investigation since they are related to a specific group,⁵¹ while truly eligible individuals could be deprived of their right to asylum only because of their nationality.

The European Union and the UNHCR approaches render Afghan refugees deprived of international human rights protection. The content of the decisions and the Guideline could be anything but fair accepting

⁴⁹ European Council, *EU- Turkey Statement*, (Brussels: European Council, 2016).

⁵⁰ Ibid.

⁵¹ Jenny Poon, “Legal Responses to the EU Migrant Crisis: Too Little, Too Late?” *E-International Relations*, (2018): 2-12.

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group based asylum claims, which violates the Refugees Convention's basic objectives and refugees' basic international human rights. Furthermore, this approach is a clear violation of the non-refoulement principle (Article 33 (1) of the convention), which is a key international human right of refugees as we discussed concerning Afghans protection against deportation above.

4.2. The Current Legal Mechanism to Refugee Rights' Protections

Based on UNHCR 2019 Guideline, there are three different mechanisms to ensure and develop refugee human rights protection. UN treaty-based organs are the first responsible international organizations to observe refugee rights conditions and the implementation of the core international human rights treaties in the host states. Special Procedure is the other mechanism where an individual, expert, or a working group report an issue with recommendations to the Council or the General Assembly. The Universal Periodic Review is a mechanism established by the UN General Assembly in 2006 by which the UN Human Rights Council reviews the performance of the states regarding refugee human rights and provides practical advises.⁵² Nevertheless, there is no evidence to show the effectiveness of any of these mechanisms in combating the refugee rights' violations, at least in Turkey, yet.

4.3. Recommendations

Considering the sources used in the paper regarding Afghan refugees in Turkey, the following recommendations could be helpful:

a. Considering the weighed responsibility of the Turkish Government regarding refugees' protection, an international and accurate system of

⁵² United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2015* (New York: Committee No 112, 2016).

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observation and supervision needs to be an assessment to ensure refugee rights’ protection. In other words, the international community has to consider that protection of the international human rights of nearly four million human beings is neither a mere responsibility nor an ability of Turkey. The entire international society is responsible to pay attention to the refugee crisis that currently exists in Turkey.

b. The international community has to ensure that Turkey considers a prompt registration system in granting identification cards for asylum seekers without any discrimination based on nationality or marital status. Turkey has to provide the granting of temporary identification cards in case of a possible delay in granting/renewal of identification cards, so normal life routine could not be endangered by procedural delay.

c. The UNHCR and EU are supposed to ensure that Turkey considers “a margin of appreciation” in limiting the basic international human rights of non- Syrian refugees, such as the right to enter, the right to work, access to health care centers, etc. These international organizations must require Turkey to consider at least a minimum level of responsibility toward Afghan refugees living in Turkey. In addition, Turkey needs to ensure that the refugee entering procedure does not violate the main principles of non-discrimination and the non-refoulement anymore. Turkey is supposed to accept and investigate individual claims separately instead of accepting claims related to a specific group without investigating them.

d. In order to stop Afghan refugees’ prompt detention and deportation from Turkey, efficient action is required.

e. The European Council and the UNHCR Guideline which influence Turkey’s policy needs to preclude discrimination against Afghan asylum seekers in different stages.

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f. The government can waive the work permit fee of employers and encourage employers to hire refugees so that all categories of refugees can have access to the labor market without any barriers.⁵³

g. The government should conduct an educational and informative campaign regarding the socio-economic lifestyle, health, and education system in Turkey. The programs are urgently needed for all refugees in order to continue life easily in “satellite cities.” Similarly, the main beneficiaries of public awareness campaigns need to be lay people to understand refugee status and their positive advantages for the economy of the county. This could decrease the chance of discrimination against refugees in society and pave the way for refugees to have access to the labor market and continue productive lives, which supports both refugees and Turkey’s economy.

h. Refugees or asylum seekers in Turkey need to be well aware of UN Human Rights Mechanisms through training, instructions, and brochures, so they can complain if they face any violation of their rights to international organizations. In addition, several national and international academic efforts need to focus on the protection of refugees’ rights through research and studies.

i. Advanced and extensive educational and informative programs regarding the refugee registration procedure, refugee status, their journey, and their rights will save them from deep confusion and help refugees decide wisely whether to continue their journey. Furthermore, the UNHCR must consider a responsive and capable system where refugees, especially non-Syrian, could contact the UNHCR, ask for information, and complain against the lack or failure of legal protection they are promised to receive in Turkey.

⁵³ Leghtas and Thea, “You Cannot Exist in This Place,” 1-12.

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j. Refugee women need special care and attention through professional and social awareness sessions and training. So, this awareness will not only benefit women but all family members, especially children.

Conclusion

Afghan refugees receive less attention and legal protection of their human rights than any other group of refugees in Turkey. The most serious obstacles against Afghan refugees’ rights are violations of basic international refugee principles. The European Union, the European Council, and the UNHCR are the real designers of the current insufficient policy and procedure for Afghans in Turkey. The current procedure is in clear violation of the non-discrimination and the non-refoulement principles in international refugee law which justify precluding entrance to the borders, deportation, rejection of asylum claims, rejecting the renewal of refugees status, and arbitrary detention for Afghan Refugees. Granting official documentation that proves residency permits and refugees status is supposed to be the primary legal protection refugees receive. Nevertheless, Afghans suffer and face hardships not receiving even such primary protection in Turkey. Furthermore, Afghans face significant challenges in education, housing, and employment aspects irrespective of whether they are with or without refugees status.

The Afghan Government is responsible to protect its nationals’ human rights in foreign countries, but due to several domestic challenges, the government is incapable of doing so. However, Afghanistan and Turkey have a friendly relationship, which helps the Afghan Government to ask for Turkey’s support to protect the Afghans refugees’ rights. It is noteworthy that far better legal protection was promised for Afghan refugees during the Afghanistan and Turkey officials’ joint meetings at the end of March 2019. However, these official meetings were rather symbolic and did not provide any further legal protection, as Turkey did not agree upon any new

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liability in favor of non-Syrian refugees, contrary to Turkey's international responsibility as declared in the EU-Turkey 2016 deal.

The international community, the UNHCR, Human Rights Watch, the European Union, and similar related organizations' supervision, reports, and recommendations are very significant in developing and strengthening a legal protection system for Afghan refugees, as well as refugees of other nationalities in Turkey. Therefore, urgent attention and action are required to improve the living conditions and observance of Afghan refugees' international human rights in Turkey.

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