

# SYRIAN REFUGEE WOMEN AND GIRLS IN TURKEY & THE ISTANBUL CONVENTION

*Legal practices in Turkey and abroad are gender blind and lack gender sensitivity when it comes to sexual and gender-based violence. States fail in preventing sexual and gender-based violence towards women due to the lack of clearly defined gender-sensitive regulation, which puts them in a vulnerable position where they cannot seek legal persecution. Refugees are especially vulnerable due to their “guest” status in Turkey and do not have the means to seek legal solutions in the face of violence. This article will tackle how the feminist movement can advocate on the full implementation of the Istanbul Convention as a tool to prevent and combat sexual and gender-based violence against refugee women and girls in Turkey. It will point out how the Istanbul Convention seeks to recognize gender-based violence as a form of persecution.*

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**S**ince the start of the war in Syria, Turkey has become the host of the largest refugee population in the world<sup>1</sup>. According to the United Nations High Commissioner for Refugees (UNHCR), as of 7 February 2019, there are a total of 3,644,342 registered Syrian refugees in Turkey.<sup>2</sup> Furthermore, there are around hundreds of thousands of unregistered Syrian refugees in Turkey, amounting to more than four million in total. Although Syrian refugees reside in all 81 provinces, they are concentrated in particular areas, especially in major cities and towns close to the Syrian border.<sup>3</sup> 64 percent of Syrians who fled Syria since the beginning of the war reside in Turkey.<sup>4</sup>

This article explores how the feminist movement in Turkey uses different strategies to advocate for protecting the rights of Syrian refugee women and girls in Turkey. It focuses especially on the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) as a strong international tool to fight for the rights of refugee women and girls.

The refugee crisis is particularly challenging for women and girls. Gender-blind immigration policies further increase their vulnerability to sexual and gender-based violence. These vulnerabilities of Syrian female refugees are due to the lack of access to financial and social resources, together with the multiple layered forms of violence. Lack of language skills, lack of access to income-generating activities, changing social norms, and negative coping mechanisms are the core reasons for the discrimination and violence refugees face.

Since there is no official refugee status in Turkey, refugees remain in a precarious situation and are often labeled “guests,” despite the fact that some have been residing in Turkey for almost eight years. LGBTI people and sex workers are especially vulnerable to exploitation. In fact, the extent of their vulnerability cannot be determined in detail due to limited data collection and poor legal protection. In view of these limitations, this article will focus on the methods of using the Istanbul Convention to create gender-sensitive refugee policies for Syrian women and girls in order to prevent and combat sexual and gender-based violence.

<sup>1</sup> UN High Commissioner for Refugees, “Syria Regional Refugee Response: Turkey,” *Operational Portal Refugee Response*, 25 April 2019, <https://data2.unhcr.org/en/situations/syria/location/113>

<sup>2</sup> UN High Commissioner for Refugees (2019)

<sup>3</sup> “Türkiye’deki Suriyeliler: Özel Rapor,” T.C. Kamu Denetçiliği Kurumu (Ombudsmanlık), 2018, p. 195, <https://www.ombudsman.gov.tr/suriyeliler/rapor.html>

<sup>4</sup> UN High Commissioner for Refugees, “Syria Regional Refugee Response: Turkey,” *Operational Portal Refugee Response*, 25 April 2019, <https://data2.unhcr.org/en/situations/syria/location/113>.

Throughout the article, I will be using the term “refugee” to refer to Syrians who sought safety in Turkey during the civil war in Syria. One should bear in mind that Turkey does not consider any of them as legal “refugees,” which is clearly defined in the 1951 Geneva Convention Relating to the Status of Refugees.<sup>5</sup> As a civil activist I prefer to use the term “refugees” in referring to the Syrians residing in Turkey, despite the formal language of the state that define Syrians as “guests.”

### *The Legal Status of Syrian Refugees in Turkey*

The Geneva Convention initially imposed refugees’ rights and obligations only to pre-1951 refugees, not to future ones. “Signatories were given the option of applying the convention to all refugees or only to European refugees; Turkey opted for the latter, thus establishing a ‘geographic limitation.’ Later on, the 1967 Additional Protocol Relating to the Status of Refugees removed these temporal and geographic restrictions drawn by the Geneva Convention. However, it grandfathered the right of 1951 signatories, such as Turkey, to continue to adhere to the geographic limitation established before.”<sup>6</sup>

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*“Gender-blind immigration policies further increase their vulnerability to sexual and gender-based violence.”*

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During the beginning of the refugee movement, the Turkish government was careful to refer to the refugees from Syria strictly as “guests.” In October 2011, however, the Turkish Government announced that it would consider refugees as people under “temporary protection.” Consequently, the term “guests” was used less and less in both formal and informal discourse.<sup>7</sup> In the meantime, the Turkish Government began to use the terms “refugees” and “guests” interchangeably—apparently now less concerned that their use of the term “refugee” would be confused with Geneva protections.<sup>8</sup> The Turkish media also generally refers to the Syrians as refugees.

<sup>5</sup> Alan Makovsky, “Turkey’s Refugee Dilemma,” *Center for American Progress*, 13 March 2019, <https://www.americanprogress.org/issues/security/reports/2019/03/13/467183/turkeys-refugee-dilemma/> According to the convention, refugee is defined as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”.

<sup>6</sup> Alan Makovsky (2019)

<sup>7</sup> Kemal Kirişci, “Syrian Refugees and Turkey’s Challenge: Going Beyond Hospitality,” *Brookings Institution*, 2014, p. 14, <https://www.brookings.edu/wp-content/uploads/2016/06/Syrian-Refugees-and-Turkeys-Challenges-May-14-2014.pdf>

<sup>8</sup> See, for example, Republic of Turkey Prime Ministry, Disaster and Emergency Management Presidency, “Syrian Guests in Turkey” (Ankara, Turkey: 2014.), available at <https://www.afad.gov.tr/upload/Node/3494/xfiles/syrian-guests.pdf>, p. 7 which states: “In this report, the words of ‘guest’ and ‘refugee’ indicates The Syrian citizens under temporary protection status in Turkey.”

The Turkish Government formalized its temporary protection regime with Article 91 of its Law on Foreigners and International Protection (LFIP), which passed in April 2013, and with the Temporary Protection Regulation (TPR) issued in October 2014.<sup>9</sup> The TPR includes a right to health and education for those under protection, just as the Geneva Convention. There are some differences, however, under the TPR; Syrians need Turkish government-granted work permits in order to be legally employed in the country.<sup>10</sup> The difficulties of the application system drives most Syrian workers into the underground economy and leaves them open to exploitation. In contrast, Article 24 of the 1951 Geneva Convention guarantees refugees a right to work that is essentially equivalent to that of the host country's citizens.<sup>11</sup>

In sum, by its national law, Turkey is obligated to admit non-Europeans who fit the Geneva definition of a refugee, but instead, the government accords refugees with fewer rights than those given full-fledged refugee status by the 1951 Geneva Convention. This is due to the fact that commitment based on national law rather than international obligation, is inherently easier to change and, therefore, less binding.

### *The Istanbul Convention*

Opened for signature in Istanbul in May 2011, “The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)” is the first legally-binding instrument in Europe in its field, and the most far-reaching international treaty to tackle this serious violations of human rights.<sup>12</sup> It is also the first international treaty to contain a definition of gender. This definition refuses to solely categorize women and men biologically as female or male, and highlights the socially constructed roles assigned to women and men, arguing that certain roles and behaviors can contribute to the social acceptance of violence against women.

<sup>9</sup> See Asylum Information Database and European Council on Refugees and Exiles, “Introduction to the Asylum Context in Turkey,” available at <https://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey> (last accessed February 2019). For the Turkish text of the LFIP, see Mevzuat Bilgi Sistemi, “LFIP (Yabancılar ve Uluslararası Koruma Kanunu),” Law no. 6458 (2013), available at Republic of Turkey Ministry of the Interior Directorate General of Migration Management, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf>. An English-language translation of the, “Temporary Protection Regulation” (Ankara, Turkey: 2014), available at <http://www.goc.gov.tr/files/files/temptemp.pdf>. Links for an English translation of the LFIP and the Turkish text of the TPR (Gecici Koruma Yönetmeliği) can be found at <https://www.asylumineurope.org/reports/country/turkey/overview-legal-framework>

<sup>10</sup> See Republic of Turkey Ministry of the Interior Directorate General of Migration Management, “Temporary Protection Regulation”; European Council on Refugees and Exiles and Asylum Information Database, “Content of International Protection: Turkey,” available at <https://www.asylumineurope.org/reports/country/turkey/content-international-protection> (last accessed February 2019); European Council on Refugees and Exiles and Asylum Information Database, “Overview of Main Changes Since the Previous Report Update: Turkey,” available at <https://www.asylumineurope.org/reports/country/turkey/overview-main-changes-previous-report-update> (last accessed February 2019); Coşkun and Nielsen, *Encounters in the Turkey-Syria Borderland*, pp. 17–29, especially pp. 25–26

<sup>11</sup> “Convention and Protocol Relating to the Status of Refugees,” U.N. High Commissioner for Refugees, p. 25.

<sup>12</sup> The full text of Istanbul Convention available at <https://rm.coe.int/168046031c>

The Istanbul Convention introduces a set of groundbreaking criminal offenses such as female genital mutilation, forced marriage, stalking, forced abortion, and forced sterilization. This means that states will have to introduce important offences to their legal system, which may have not been included before.

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*“The Istanbul Convention is the first international treaty to contain a definition of gender.”*

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Turkey has been the first country to sign and ratify the Istanbul Convention and submitted its instrument of ratification to the Secretariat of the Council of Europe on 14 March 2012. Despite having ratified the Istanbul Convention as one of the first member countries of the Council of Europe, little headway has been made in Turkey to address and combat violence against women. The implementation of the Convention is poor and limited due to a lack of political will. Feminists in Turkey have been taking action in many ways to advocate for the implementation of the Istanbul Convention within the broader commitment of gender equality and ending violence against women in Turkey. Efforts have been made with concrete proposals for action at a local and national level in order to expedite the implementation of the convention and encourage dialogue among key stakeholders in order to improve framework and provision.

### ***Why does the Istanbul Convention Matter for Refugee Women and Girls?***

Gender-based violence is often the reason why women seek asylum. Women are denied equal standing with men on fundamental legal matters not only in Turkey, but in many countries across the world. They are either denied their human rights or are severely punished for transgressing fundamentally discriminatory social norms. Despite the fact that these circumstances are deeply unfair and, they are not necessary grounds for persecution recognized by the UNHCR 1951 Convention relating to the Status of Refugees. However, this is not the practice in Turkey, which is why the Istanbul Convention seeks to ensure that gender-based violence against women is recognized as a form of persecution by the UNHCR 1951 Convention and that such violence should give rise to subsidiary protection.

The Istanbul Convention focuses specifically on protecting asylum-seeking and refugee women in Articles 60 “Gender-based asylum claims” and 61 “Non-refoulement.” Unfortunately, the enforcement possibilities of these

provisions state clearly that hard consequences cannot be enforced on signatory states, including Turkey. This lack of accountability creates difficulties in implementing the Convention.

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*“Despite the successful existence of legally binding regulations, women in Turkey are denied equal standing on fundamental legal matters.”*

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“The adoption and full implementation of frameworks aligned with international normative standards – including those standards outlined in The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the European Union *acquis communautaire*– are essential for addressing gender-based discrimination and violence against women.”<sup>13</sup> The feminist organizations in Turkey have been working hard to put these internationally binding treaties in the center of their advocacy activities to hold the government accountable for effective implementation and to monitor the prevention and response of violence against women. Despite the successful existence of legally binding regulations, women in Turkey (both the host community and Syrians) are denied equal standing on fundamental legal matters. “The police and judicial authorities may refuse to extensively concern themselves with ‘domestic matters,’ which involve abuse, rape, torture and other heinous crimes against women. Women are still forced to undergo certain traditional practices, such as child marriages, forced marriages, and are still being denied their human rights or are severely punished for transgressing fundamentally discriminatory social norms.”<sup>14</sup>

“The Istanbul Convention addresses the specific issues faced by women refugees in making explicit reference to the protection of refugee women from violence and establishes several obligations in relation to asylum claims for State Parties. In particular, it requires states to recognize gender-based violence as a form of persecution under the Refugee Convention, and also to ensure a gender-sensitive interpretation to the grounds of persecution and develop gender-sensitive reception procedures.”<sup>15</sup> A gender-sensitive interpretation of existing refugee policies is

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<sup>13</sup>UN Women, “Implementing Norms, Changing Minds,” 2017, <http://eca.unwomen.org/pt/digital-library/publications/2017/10/implementing-norms-changing-minds---newsletter>

<sup>14</sup> UNHCR, Parliamentary Assembly, Council of Europe, “Refugee Women and the Istanbul Convention,” 23 January 2013, [http://websitepace.net/documents/19879/1646080/20130123\\_RefugeeWomenIstanbulConvention\\_E.pdf/7a3e4a8d-bc92-47e5-9386-a9b0d78869ba](http://websitepace.net/documents/19879/1646080/20130123_RefugeeWomenIstanbulConvention_E.pdf/7a3e4a8d-bc92-47e5-9386-a9b0d78869ba)

<sup>15</sup> UNHCR, Parliamentary Assembly, Council of Europe (2013)

essential to address the widespread gender-blindness in granting safety, security, wellbeing and protection to the Syrian women and girls in Turkey. This means that gender-sensitive procedures will have to be introduced into the refugee policies in order to enable female refugees to disclose facts related to horrific and traumatizing acts such as rape, female genital mutilation and other forms of gender-based violence.<sup>16</sup>

The feminist movement in Turkey has been advocating for the full implementation of the Istanbul Convention, which includes the legal efforts to remind the official bodies of their obligations in line with domestic laws.

### **Article 60 of the Istanbul Convention**

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

### **Article 61 of the Istanbul Convention**

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

Refugee women and girls amount to about 50 percent of the persons of concern to the UNHCR worldwide. Many asylum claims involve fear or experience of gender-based violence, complex legal issues, or fear of violence by non-state actors.

<sup>16</sup> UNHCR, Parliamentary Assembly, Council of Europe (2013)

A reasonable proportion of claimants are survivors of violence who suffer from trauma.

The term “refugee” has been always a gender-blind term in both legal and field practices. Consequently, the gender dimension as a whole is not taken into consideration. Women are specifically vulnerable to forms of persecution without a harmonized gender-sensitive persecution system. This is exactly the reason why provisions on asylum have been incorporated in the Istanbul Convention. Articles 60 and 61 especially provide a legal basis for the clear interpretation of concepts. Following article 60 and 61, gender-based violence will face serious persecution in addition to the gender-sensitive interpretation of each of the 1951 Convention. “Asylum provisions are now placed within a comprehensive framework, which includes definitions (Article 3), state obligations and due diligence (Article 5), data collection (Article 11), and general prevention and protection provisions.”<sup>17</sup>

There is no other option to move forward other than the full implementation of Articles 60 and 61 in Turkey. It is equally important to develop jurisprudence and credibility assessments in line with the suggestions in the Istanbul Convention. Furthermore, Turkey should also develop and implement national guidelines for asylum systems.<sup>18</sup>

### ***Conclusion***

There are serious protection gaps for Syrian women and girls residing in Turkey. Indeed, the refugee policies in Turkey were never drafted with gender in mind and require significant resources and efforts to develop a gender-sensitive approach. There are still more discussions needed to better include Syrian women and girls’ specific experiences, and to ultimately ensure that women and girls are not discriminated in refugee policies.

“In September 2016, the UN General Assembly adopted the New York Declaration for Refugees and Migrants, expressing Member States’ commitments to protect refugees and migrants. The Declaration paves the way for member states to adopt a Global Compact on Refugees. Consistent with the New York Declaration, the Compact will ‘mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls.’”<sup>19</sup> Turkey has also committed to the Global Compact on

<sup>17</sup> UNHCR, Parliamentary Assembly, Council of Europe (2013)

<sup>18</sup> UNHCR, Parliamentary Assembly, Council of Europe (2013)

<sup>19</sup> Leitner Center, “Gendered-Approach Inputs to UNHCR for the Global Compact on Refugees (2018): Lessons from Abuses faced by Syrian Female Refugees in Lebanon, Turkey, and Jordan,” <https://www.unhcr.org/5a3bb9b77.pdf>

Refugees in order to help strengthen the Compact's protection of women and girl refugees. The women's movement in Turkey acknowledges that the Syrian women and girls are disproportionately burdened by the consequences of displacement, and these burdens should be considered when drafting each provision of the compact.

The failure in fully implementing the Istanbul Convention is evidenced by the lack of a consistent gender-sensitive approach in dealing with women and girl refugees who seek protection in Turkey. Syrian women and girls who were subjected to gender-based violence are too often confronted with legislation and policy that fail to meet acceptable standards, even on a national level. To remedy this, common standards should be propagated at the national level, and the civil society community in Turkey should continuously advocate for recognizing the gendered forms of violence and discrimination by using the Istanbul Convention as an international tool. It is imperative that remaining gaps be filled to ensure that women and girls are granted equal rights and opportunities, regardless of their official status in Turkey.