Housing, Land and Property Mapping Project

Turkey

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context will assist in delivering stronger and more equitable responses.

The HLP mapping project has been undertaken by Hogan Lovells lawyers for CARE International, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

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Housing, Land and Property Law in Turkey

1. Key laws and actors

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| --- | --- |
| [Laws](#Tenure_typologies) | The main laws governing housing, land, building and planning are the Constitution of the Republic of Turkey 1982 and the Turkish Civil Code. Other laws include: the Law of Establishment (Number 27781), the Law on Land Development Planning and Control (Number 3194), the Condominium Law (Number) 634, the Land Registry Law (Number 2644), the Expropriation Law (Number 2942, as amended by Number 4650), |
| [Key government actors](#Key_Govt_Actors) | The General Directorate of National Property has the mandate to manage public land and deal with land registration.  The Ministry of Environment and Urbanization is the government ministry office, responsible for the environment, public works and urban planning. The Housing and Development Administration of Turkey (TOKI) is a government backed housing agency who deal with the development of public housing. |
| [Shelter cluster](#Shelter_cluster) | The Shelter and Non-Food Items Cluster, UNHCR. |

1. [Common types of tenure](#Common_types_of_tenure)

The table below summarises the most common types of tenure in Turkey.

|  |  |  |  |
| --- | --- | --- | --- |
| Tenure | Commonly Registered? | Key Features | Title document |
| [Public land](#Crown_land) | Sometimes | Land owed or under control of the government, including all forests, uncultivated land and unregistered land. | n/a |
| Freehold | Yes | The right to use, benefit from and dispose of a piece of property. | Title deed. |
| Condominium | Yes | Individual units of a building of flats or apartments are owned separately, and the common areas are held jointly. | Title deed and registration certificate. |
| Lease | No | Contractual lease between a landlord and a tenant, supplemented by mandatory provisions. | Rental Agreement. |
| Easement | Yes | Limited property rights, including usufruct rights, construction rights, rights of residence, rights to water, rights of way, held separately to freehold ownership. | Title deed |

1. [Security of tenure of vulnerable groups](#Security_of_tenure_of_vulnerable_group)

|  |  |
| --- | --- |
| [Women](#Women) | Under the Constitution, women have the same land ownership rights as men and can legally own, rent and inherit property. In practice, very few women own or are bequeathed land, particularly in rural Turkey. |
| [Minority groups](#Minority_groups) | The main minorities in Turkey are the Roma and the Kurds, both of which ostensibly have rights to land and housing but face significant issues maintaining them. The Kurds represent 19% of the total population and are a majority in some provinces of south eastern Anatolia. More than 1 million Kurds were forcibly evicted from rural and urban centres in eastern and south eastern Turkey and there are ongoing issues with Kurdish tenure. |
| [Informal settlements](#Informal_settle) | There are still many informal settlements in Turkey. The land that these settlements are built on is owned by the government. The government have the legal right to demolish the settlements and reclaim the land. |
| [Landless people](#Landless_people) | Adverse possession is not recognised in Turkey. It is not lawful for an individual to occupy property that they do not have a legal right to, however this practice is still prevalent in many communities that occupy land through informal settlements. |

1. [Eviction, expropriation and relocation](#Eviction_Expropriation_Relocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | There are specific rules governing when a landlord can terminate a lease. A landlord cannot arbitrarily evict tenants unless they have a good reason, as defined by law. A reason for lease termination can include failure to pay rent, if the property is in a state of disrepair, the tenant breaches a material term of the lease, the landlord must provide shelter for its own family member or the tenant is declared insolvent. |
| [Expropriation](#Expropriation) | The Constitution allows the government to expropriate land for the provision of public services and provided that the government compensates the landowner. The law prescribes that a specific expropriation procedure must be followed.  There are also various provisions under which the government can expropriate land in an emergency, where they do not have to follow the expropriation procedure prescribed by law. |
| [Relocation](#Relocation) | There are specific rules governing relocations. There are laws that state that the land that a family is relocated to must provide the same standard of living as the expropriated land. |

1. Shelter Cluster Key Contacts

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| --- |
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Disclaimer

This report is the result of a desktop review of publically available information. This report is not legal advice.

Introduction

## Overview

CARE International aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross, with technical support from the International Federation of Red Cross and Red Crescent Societies, has provided the research template to which this memorandum responds. This memorandum comprises three main sections:

* The first section, entitled ['Common types of tenure'](#Common_types_of_tenure), provides an overview of the different types of housing and land tenure in Turkey. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled ['Security of tenure of vulnerable groups'](#Security_of_tenure_of_vulnerable_group), considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing. This section focuses primarily on women and the Roma and Kurdish ethnic minorities, all of which face barriers to owning land.
* The third section, entitled ['Eviction, expropriation and relocation'](#Eviction_Expropriation_Relocation), considers Turkish statutory and case law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

## Background information on Turkey

Turkey is a large country straddling Western Asia and the Balkans. Bordered by Greece, Bulgaria, Georgia, Armenia, Iran, Nakhichevan, Iraq and Syria, it covers an area of 783,562 kilometres squared[[1]](#footnote-1). Turkey has a population of 81.26 million, of which 14.751 million live in Istanbul, the country's largest city.[[2]](#footnote-2) Approximately 75% of the total population lives in urban areas, including the Turkish capital Ankara.

(Map from: Central Intelligence Agency, Turkey <https://www.cia.gov/library/publications/the-world-factbook/attachments/maps/TU-map.gif>)

Turkey was founded as a nation state by Mustafa Kemal "Ataturk" in 1923, and the remnants of the Ottoman Empire are still evident in the ethnic composition of Turkey. The main minority in Turkey is the Kurds (19% of Turkey's population) and other minorities such as the Roma, Laz, Circassians, Turkmens and Armenians also make up its ethnic minority population.

The two main minority groups in Turkey are the Roma and the Kurds. The Roma came to Turkey through various migration routes and are based in the province of Edirne, however they also live in most major cities in Turkey including Ankara, Istanbul, Hatay, Gaziantep, Şanlıurfa and Diyarbakır.

The Kurds also have a significant presence in the south-eastern region, especially in the provinces around Diyarbakir and Lake Van. The Kurds are represented in the Turkish Parliament by various parties, including the Peoples' Democratic Party ("HDP"). The militant Kurdistan Workers' Party ("PKK") has engaged in armed conflict with the Turkish state in pursuit of Kurdish autonomy in Turkey.

Since 2012, Turkey has seen a significant influx of refugees fleeing the Syrian Civil War. The Office of the United Nations High Commissioner for Refugees ("UNHCR") currently counts 3,621,330 registered Syrian refugees in Turkey, as well as 170,000 Afghan refugees and 142,000 Iraqis.[[3]](#footnote-3) Most of these are registered in the southern and eastern border provinces around Gaziantep, Kilis, Şanlıurfa and Hatay.[[4]](#footnote-4)

Turkey is a constitutional republic, divided into 81 administrative divisions. In July 2016, an attempted coup launched by elements of the Turkish armed forces failed, and the Turkish Government imposed a two-year state of emergency. Following a referendum in April 2017 amendments were made to the Turkish constitution which concentrated more power in the hands of Turkish President Recep Tayyip Erdoğan. The role of Prime Minister was abolished and the President has the ability to appoint and remove Ministers.

# Common types of tenure

## Tenure typologies

### What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.

The key pieces of legislation governing housing, land, building and planning are:

[The Constitution of the Republic of Turkey](https://global.tbmm.gov.tr/docs/constitution_en.pdf) (the "Constitution")

[The Turkish Civil Code](http://www.lawsturkey.com/law/turkish-civil-code-4721%20-) (the "Civil Code")

### What types of tenure exist?

Immovable property ownership is regulated by the Constitution. Article 35 of the Constitution gives everyone the right to own and inherit property, but with the caveat that this right may be limited by law in view of the public interest. Article 44 of the Constitution gives the Turkish government powers to take the necessary measures to maintain and develop efficient land cultivation and allows the government to pass laws to define the size of appropriate land units. Article 46 allows the government to expropriate privately owned real estate.

Article 4721 of the Civil Code gives freehold property owners wide discretion in what they can do with their land, within the parameters of the law.[[5]](#footnote-5) The Turkish Constitutional Court case 2015/12554 ruled that property rights under Article 35 of the Constitution do not just include the land itself, but also the airspace above the land and the earth below it.[[6]](#footnote-6)

The different types of tenure are shown in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Tenure | Registerable? | Commonly registered? | Section below |
| Public | Some | Some | (i) |
| Freehold | Yes | Yes | (ii) |
| Condominium | Yes | Yes | (iii) |
| Lease | No | No | (iv) |
| Easements | Yes | Yes | (v) |
| Usufruct Rights | Yes | Yes | (v)(A) |
| Construction Right | Yes | Yes | (v)(B) |

* + - 1. Public

Historically, during the Ottoman Empire, all land was property of the Sultan. While independent Turkey does recognise private ownership in its adoption of Roman laws, the customary notion that huge areas of land remain under government control still exists.[[7]](#footnote-7) The Constitution grants the Turkish government wide powers to maintain, develop and distribute land for agriculture.[[8]](#footnote-8) Public land in Turkey is defined as 'private immovables of the treasury' or unregistered lands. Private immovables are registerable at the Land Registry and any unregistered land is state-owned by default. Unused and uncultivated lands are also under state ownership.[[9]](#footnote-9) The government can lease or sell treasury lands at up to half their market price. The government also owns all areas of forest.[[10]](#footnote-10) The Constitution grants the state wide powers to expropriate privately owned land.

* + - 1. Freehold

Freehold ownership (mülkiyet) is the most basic category of title. The owner has the right to use, benefit from and dispose of freehold property. Title is evidenced by ownership of the title deeds (tapu) and by registration (cadastre) at the Land Registry. Land Registry records are kept in Ankara and at local Land Registry offices.

Where there is more than one owner, the joint ownership may be in the form of co-ownership in common (elbirliği ile mülkiyeti) or co-ownership by shares (payli mülkiyet):[[11]](#footnote-11)

* + - * 1. Co-ownership in common

Co-ownership in common is defined by Article 701-703 of the Civil Code. Each co-owner does not hold a distinct share in the property and the owners own the property jointly as a group. All co-owners are required to make decisions about the property unanimously and each co-owner cannot exercise its rights independently. In the event that the property is sold, the amount that each party would receive is dependent on the contribution it initially made. A co-owner may sell its right to the proceeds from the sale of its property, but this would only give rise to a personal right to the proceeds. Co-ownership in common is limited to owners who had a legal and personal relationship that existed before they acquired the property. The relationship must have been prescribed by statute and been established through a legal process.[[12]](#footnote-12)

* + - * 1. Co-ownership by shares

Co-ownership by shares is defined in Article 688-700 of the Civil Code. Each co-owner owns a defined share in the property. Each share should be stated in the title deed, and if there is nothing in the title deed, each owner is presumed to hold an equal share. Each co-owner is entitled to deal with their share independently, such as transferring the share to a third party or mortgaging the share, although it is not allowed to rent its share. The share can be seized by creditors as a debt. Co-owners must make some decisions unanimously, such as decisions about fundamental management tasks, while ordinary management tasks can be carried out by each co-owner independently.[[13]](#footnote-13)

* + - 1. Condominium

The Turkish Condominium Law No 634 (the "**Condominium Law**") establishes condominium ownership rights. Condominium ownership is an immovable property right that allows independent units in one building (e.g flats and apartments) to be owned separately from the main building. The common areas of the building are owned jointly under shared title by all the independent owners of each unit. Condominium ownership is registered in the same way as freehold ownership at the Land Registry. The owner of a unit has all the rights and authority over its independent section of the building.[[14]](#footnote-14) All the owners have the right to use the common areas.[[15]](#footnote-15) In order to not disturb one another, owners are legally obliged to comply with the terms of the management plan, which regulates the way in which the common parts are used.[[16]](#footnote-16) Each owner must also participate in paying for the upkeep of the common areas.[[17]](#footnote-17) There are legal prohibitions on hospitals being established as condominiums.[[18]](#footnote-18)

* + - 1. Lease

Law No 6570 on Real Property Leases and the Turkish Code of Obligations No 818 governs the landlord-tenant relationship in Turkey. Mandatory provisions offer tenants protection from increases in rent and lease termination. Residential leases are normally granted for a term of one year, unless otherwise agreed by the parties. Article 344 of the Turkish Code of Obligations stipulates that rent agreed in Turkish Lira can't be increased, other than in line with inflation. Rent agreed in a foreign currency can't be increased within the first five-year period. Landlords are legally required to renew one-year leases unless they have a 'good reason', which is defined by statute, to terminate the lease. Landlords are able to terminate one-year leases at the end of a ten-year period without a good reason. The following are "good reasons" to terminate a lease:

* Failure to pay rent and the landlord has served two written notices on the tenants of this fact within one year;
* Tenant has promised to vacate;
* The landlord has a specific need for the property (for example, providing shelter for a family member);
* The property needs repairs that can't be carried out while the tenant is in occupation;
* The tenant breaches a material term of the lease, or an immaterial term and doesn't rectify the breach within 30 days; and
* The tenant is declared insolvent.[[19]](#footnote-19)

Tenants may sublet or assign (whole or parts) of the property in some circumstances. Tenants must gain landlord consent if they want to assign or sublet their lease. There is an exception under to this rule under Law No 6570 for hotels, boarding houses and dormitories, where parts of the property may be assigned or sublet without landlord consent.[[20]](#footnote-20)

* + - 1. Easement rights

Certain limited property rights may be held as easements. The easements that can be held over public land are listed in Article 4721 of the Civil Code. The most common easements are[[21]](#footnote-21):

Usufruct Rights

Usufruct rights (intifa hakkı) are defined as rights of an individual to use and benefit from another person's property. They are more personal in nature as the right cannot be transferred and do not allow the beneficiary of the right to make fundamental changes to the use of the property. Usufruct rights are regulated under Article 794 of the Civil Code.[[22]](#footnote-22)

Construction Rights

These rights can be granted to a third party (üst hakkı), normally a contractor. Before beginning construction, a construction permit (yapi ruhsati) must be obtained from the relevant district under Article 21 of the Zoning Law and there is a lengthy licencing process to follow. [[23]](#footnote-23) It is possible for construction rights, which are not proprietary rights on their own, to be converted to property rights if the contractor is granted an interest in the property as consideration for the construction carried out.

Additionally, construction rights are capable of becoming a separate property interests on their own. If the right to construct is intended to be indefinite, the right can be registered at the Land Registry and treated as a proprietary interest. The holder of the construction right will become the owner of any buildings that are built on the land.[[24]](#footnote-24)

### Which, if any of these types of tenure provide a high degree of security of tenure?

With the exception of leases, the above forms of tenure each provide a high degree of security of tenure as they are registered interests in land. These records are definitive and have roots in the Ottoman Land Registry system. The government are working on developing electronic access to Land Registry records.[[25]](#footnote-25)

Leases also provide a degree of security of tenure as the law protects the interests of the tenant and ensures the landlord cannot terminate a lease without a good reason (please see section 2.1(b)(iv) above).

### How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.

Statistical data from 2018 is not readily available and so we do not know the prevalent tenures in urban and rural areas.

The government and local municipalities have focused on renewal projects at provincial and sub-district levels, while there has been little or no development in rural areas. The renewal process has, among many other things, affected squatter communities (*gecekondus*). Urban renewal projects have meant that many gecekondus have been displaced and there may be an increase in condominium ownership and freehold title as a result in future.

On 13 September 2019 the Ministry of Environment and Urbanisation announced an action plan to overhaul cities. The plan aims to demolish risky old buildings, move industrial sites away from heavily populated areas and build more sustainable living spaces. This involves the transformation of 1.5 million housing units and the construction of 60,000 backup housing units to house individuals who have been displaced. The plan aims to remove all buildings that are non-compliant with buildings regulations and have a high risk of collapsing in the event of a natural disaster, such as earthquakes, landslides and flooding.[[26]](#footnote-26)

Previous efforts to increase land cultivation under Law No 4070 in rural areas indicate that there may be a predominance of state ownership (public land) in rural Turkey. However, it is important to note that the move to commercialise agriculture has also resulted in the government selling some unused/uncultivated land for use in commercial agriculture, meaning some land that was previously in their control is now under private ownership.

## Documenting tenure

### What statutory instruments or legal documents (eg title deeds or leases) are used to create or transfer tenure?

The table below identifies the statutory instruments used to create and transfer registered interests in land.

|  |  |
| --- | --- |
| Freehold | Title Deed (Tapu) |
| Lease | Rental agreement |
| Condominium | Title Deed (Tapu)  Registration certificate for management plan.[[27]](#footnote-27) |
| Easements | Title Deed (Tapu) |

Apart from leases, which consist of a very basic fixed rental agreement, the above interests do not come into existence unless they have been registered. A legal interest is not created unless an official title deed is issued at the Land Registry with the name of the owner.

The transfer of freehold tenure follows the following process:

* + - 1. Preliminary agreements – the parties can execute (1) letters of intent or (2) promise to sell agreements. Promise to sell agreements must be executed before a notary public in order to be legally binding. They can be amended by each party so as to be bespoke to a particular property transaction and typically include provisions such as the purchase price, conditions precedent, representations and warranties, termination rights and indemnities. Letters of intent are not legally binding.
      2. Sale contract – this is executed as a standard form at the Land Registry. It is not possible to make tailor-made sale contracts.
      3. Completion – contracts are executed at the Land Registry. Proof of ID must be submitted to the Land Registry along with documents from the relevant municipality indicating the registered tax value of the property and that there is no outstanding real property tax. The transfer is registered at Land Registry office. The buyer and the seller must each pay a title deed registration fee (2% of the declared purchase price).

The seller will be responsible for defects under statute and remain responsible if the property is burdened with any undisclosed third party rights or limitations. The parties can agree on a monetary limit for this liability. The buyer may inherit responsibility for contamination as there is a statutory presumption that the occupant causes the contamination. The buyer can also incur liability for omitting to inspect construction work.

Historically there have been significant restrictions on foreigners buying property on the grounds of security, political risks and protection of the national interest. Under Article 35 of Land Registry Law No 2644, foreign individuals can own property in accordance with legal restrictions and must be a national of a state that the Council of Ministers of Turkey deems necessary for the development of international relationships and in the public interest. Law No 6302 has further amended the restrictions to the following:

* Foreigners can buy a maximum of 30 hectares;
* Foreigners can only buy up to 10% of the total area of a district/town;
* Foreigners are prohibited from purchasing or renting within military forbidden zones and security zones;
* Property can be subject to winding up if the property is acquired in violation of the law.

Foreigners from some countries may not be permitted to purchase property at all.[[28]](#footnote-28) As transfer can only take place at the Land Registry office in the relevant location, individuals must ensure they are in Turkey or appoint an attorney to attend to the transfer procedure on their behalf.

### What non-legal documents or actions (eg verbal agreements or handshakes) are used to create or transfer tenure?

In general, legal tenure cannot be created or transferred other than through registration at the Land Registry.

An exception to this rule is public land. According to Meadows Law No 4342, public lands that people of a village or a town benefit from are excluded from registration requirements. As public land also includes all unregistered/uncultivated land, it falls under the ownership of the state without being registered by default.[[29]](#footnote-29) Leases are the other exception to the registration requirement.

## Customary ownership

### Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (eg, constitution, national legislation?)

Shared title (hisseli tapu) exists as an Ottoman form of ancient land ownership that is not an official part of Turkish law. Multiple individuals own a share in a parcel of land, but unlike condominium ownership, the land has not been divided up, nor has it been apportioned to individual owners. This type of arrangement is particularly common in gecekondus. Residents technically have no legal claim to this land, do not own the title deeds and have no guaranteed security of tenure. This land is legally owned by the state.

### What are the sources of customary rules?

The source of customary ownership has its roots in Ottoman land law. During the Ottoman Empire, all land was legally the property of the Sultan and individual ownership was not recognised at law. Notwithstanding this, the law did reserve the rights of citizens to seize vacant parcels of land as long as the citizens were willing to use the property and give it a function. During the second half of the 19th century, the Empire began to adopt property ownership laws. After Turkey's independence in 1923, the government adopted the Swiss Civil code and Roman law introduced the system of legal ownership. However, as much of Turkey is under federal control, customary occupation has remained (although the Turkish government have made several attempts to remove squatter communities).[[30]](#footnote-30)

### What are the customary rules governing housing, land and property?

Communities have been occupying land on a customary basis for many years. Communities take advantage of an ancient Turkish legal precept: that if a house is built overnight and communities have moved in by the morning, they cannot be removed without a court order.

A loophole in Turkish law has historically allowed communities to organise themselves in this way. Communities with 2,000 residents can apply to become a quasi-independent municipality (belediye) or a district (ilҫe), this gives communities the right to organise elections and create their own local government, thus offering communities further protection even without ever holding legal ownership of the relevant land.[[31]](#footnote-31) This has legitimised customary rule. In practice, it is unclear as to how much this loophole is still used in Turkey.

### What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?

Legal ownership overrides hisseli tapu and therefore makes settlements vulnerable to any changes the government wishes to implement. The government technically owns the land, and in 1949 they passed the Demolition of Illegally Built Structures Law No 5431 and the Gecekondu Law No 775 in 1966 which allowed for the demolition of settlements and made it illegal to construct new ones. This strategy was met with fierce opposition.

In the 1980s, the government changed their approach and implemented a procedure to legalise settlements and allowed squatters to obtain secure title. The most recent course of action the government has taken is to pass Law No 5162. Law No 5162 has made The Housing and Development Administration of Turkey (TOKI) the agent for developing gecekondu settlements. TOKI is now focusing efforts on demolishing settlements and building new residential units. The occupants of the previous settlements are provided with housing units in return for low long term repayments.[[32]](#footnote-32) This policy has also been controversial.

## Informal settlements

### What are the locations and boundaries of informal settlements?

Gecekondu neighbourhoods have been built in any available open space during rapid urbanisation and are especially found in Turkish cities regarded as 'centres': Istanbul, Bursa, Kocaeli, Ankara, Izmir and Adana.[[33]](#footnote-33) Efforts to upgrade gecekondus into social housing are likely to result in a decline in their numbers.

### What kind of tenure arrangements are in place in informal settlements?

Please refer to section 2.3.

# Security of tenure of vulnerable groups

## Women

### Can women legally own, rent or inherit land and housing?

Under Article 10 of the Constitution, everyone is equal before the law without distinction as to race, colour, sex, political opinion, philosophical belief, religion and sect, or any similar grounds. As of a paragraph added on 7 May 2004, men and women have equal rights and the State has the obligation to ensure that this equality exists in practice. Under Article 35 of the Constitution, everyone has the right to own and inherit property.

Under Article 188 of the Constitution men and women have equal status within marriage and Turkey operates a "partial community property regime", which allows for the equal division of property acquired during marriage.

Therefore, women can legally own, rent and inherit land and property.

### In practice, do they? If not, why not?

In practice, women do not appear to own, rent and inherit land in the same numbers as men. There are few recent statistics on this matter but a 2004 Amnesty International report found that men owned 92% of all immovable property in Turkey. In practice, property is more commonly registered in the names of male relatives and inheritance customs favouring a patrilineal route are favoured over legal rights to inheritance. A 2018 Daily Sabah article found that 63% of holders of title deeds were men in Turkey (as a whole), rising to 86% in the south-eastern city of Hakkari.

O'Neil and Toktas[[34]](#footnote-34) cite 2008 research which found that 9% of women owned, jointly or independently, some form of vacant land and that 17% of women owned part or all of at least one home. They argue that this is due to the "hybrid rule system in which different sources of law – the Civil Law, Islamic Law and customary law – compete". Although Islamic Law neither deprives married women of property they bring or acquire nor binds them to use their property to support their family, Turkish social customs, particularly in eastern Turkey, do not preserve a woman's entitlement to her property. Practices of dower and dowry are common in certain parts of Turkey and daughters, having received a dowry, are often excluded as inheritors. Under Islamic Law, inheritance rights are often weighted in favour of male heirs.

This is largely dependent upon the geographical areas in Turkey, with the Black Sea region and provinces around Gaziantep showing particularly entrenched gender disparity in land ownership.

## Indigenous groups

### Is indigenous customary ownership (or custodianship) of land legally recognised?

Turkey has only existed as a country since 1923, following the breakup of the ethnically diverse Ottoman Empire, so the concept of indigenous groups is inappropriate in this context. Please see below at 3.3 for the Kurds.

### Does customary ownership provide indigenous people with a high degree of security of tenure?

N/A.

### If not, what are the barriers to indigenous people living on or owning their land?

N/A.

### Is there conflict between indigenous groups regarding land ownership?

N/A.

### If so, to what degree? Are there mechanisms for resolving these conflicts?

N/A.

## Minority groups

### Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?

The main minority groups in Turkey are the Roma and the Kurds

* + - 1. Roma

In 2004 Turkey passed an amendment to Article 90 of the Constitution stipulating that where Turkish law conflicted with an international convention to which Turkey was a signatory, the convention would apply. Turkey is a signatory to various conventions which would grant the Roma housing rights (such as the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination). The combination of Article 10 (forbidding discrimination) and Article 57 (concerning the right to housing) of the Constitution further confirms that de jure the Roma's housing rights are enshrined in Turkish law.

* + - 1. Kurds

There are roughly 15 million Kurds in Turkey, mostly living near the borders of Iran, Armenia and Georgia.[[35]](#footnote-35) Like the Roma, the Kurds have rights to housing in Turkey enshrined in the Turkish Constitution.

### If so, are they subject to special conditions or restrictions?

No.

### In practice, do minority groups legally own and/or rent land and housing? If not, why not?

* + - 1. Roma

Turkey's marginalised Roma population faces considerable barriers to owning and renting land and housing, yet there is limited data available on their circumstances. Roma settlements are vulnerable to relocation to make way for urban development[[36]](#footnote-36) in Turkey and were among the first neighbourhoods targeted for urban regeneration in 2005. For example, Roma who lived in the neighbourhood of Sulukule in Istanbul were resettled 40 kilometres from the city centre. The Minority Rights Group has identified widespread discrimination against the Roma which has had the effect of limiting their access to housing in Turkey.[[37]](#footnote-37) Pertinently, there are reports of landlords in Uşak and Diyarbakir cancelling rental agreements upon discovering the tenants would be Roma. Less tangible discrimination and the isolation of Roma communities has resulted in the 'ghettoisation' of the Roma, such as in the Şafak neighbourhood in Edirne, where living conditions are poor and the homes inadequate.

* + - 1. Kurds

Following the break out of armed conflict between the PKK, a Kurdish nationalist military group, and the Turkish state, Kurdish access to housing and land has been de facto limited. Between 1984 and 1994, at least 3,000 villages were deliberately destroyed as part of a campaign of rapid urbanisation in the south east and more than a million Kurds were evicted from rural and urban areas.[[38]](#footnote-38) Many of those internally displaced have been placed in poor quality housing[[39]](#footnote-39)

Various development projects in the south east of Turkey continue to uproot the Kurds, such as the Ilisu Dam on the Tigris river. It has been suggested that this will displace up to 78,000 people.[[40]](#footnote-40)

However, the Turkish government is making an investment in an urban renewal programme, which launched in the south east in March 2018 to relocate and rehouse those displaced by the conflict. There have been reports that residents were not told before their houses were demolished and compensation has not yet been received.[[41]](#footnote-41)

## Landless people/squatters

* + 1. Do landless people/squatters have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?
       1. General

Please refer to section 2.3.

* + - 1. Syrian Refugees

According to the UNHCR, Turkey currently hosts over 3.6 million Syrian refugees.[[42]](#footnote-42)

Turkey implements a temporary protection regime for Syrian refugees, which grants a right of legal stay and some level of access to basic rights and services. Furthermore, applicants for international refugee protection generally have the right to remain on Turkish territory during the application. The access to the international protection procedure changed substantially in 2018, when the UNHCR stopped being involved in registrations. The Provincial Directorate of Migration Management ("PDMM") is now responsible for registering refugees on a province-by-province basis.[[43]](#footnote-43) This change has caused difficulties for those accessing asylum procedures, due to lack of capacity at the PDMM. In some cases, this means it may take years for refugees to access asylum.

Many refugees are housed in temporary accommodation centres and camps around Hatay, Mardin and Gaziantep. The number of accommodation centres has been reducing, with six camps closed in 2018. Residents were granted cash assistance to find alternative accommodation.[[44]](#footnote-44)

Moreover, under a network of regulations relating to Article 35(2) of the Law on Property No 2644, Syrians are not permitted to purchase real estate in Turkey. This stems from historic disputes between Syria and Turkey about the Sanjak of Alexandretta (today’s Hatay province).[[45]](#footnote-45)

* + - 1. **Other Refugees**

Additionally, there are around 370,000 non-Syrian refugees living in Turkey,[[46]](#footnote-46) including around 170,000 Afghans who fled violence in Afghanistan or are seeking better opportunities and protection than that offered by neighbouring Iran. The responsibility for these refugees was transferred from the UNHCR to the Turkish government in 2018 and now the chief obstacle facing these refugees is obtaining an identity card. Refugees Deeply has reported that many landlords in Turkey will not accept refugees as tenants without an identity card.[[47]](#footnote-47)

## General questions

### Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?

See above at section 3.3.

# Eviction, Expropriation and Relocation

## Evictions

### Are there laws or regulations prohibiting forced evictions?

Please see section 2.1(b)(iv) on leases for more information about when a landlord can terminate a lease.

### In practice, are those laws adhered to?

There is no information readily available as to whether these laws are adhered to.

## Expropriation

### Are there laws or regulations permitting the government to expropriate land?

Article 46 of the Constitution permits the government to expropriate privately owned real estate wholly or in part and impose "administrative servitude," in accordance with the principles and procedures prescribed by law. In addition, Article 36 of the Constitution protects an individual's right to own property, with the important caveat that the exercise of the right shall not contravene the public interest.

Turkey has implemented the following expropriation laws:

* Expropriation Law No 2942 forms the legal basis for administrations to expropriate if land is required for public services;
* Law No 3634 allows for the expropriation of land for national defence or in situations of extreme urgency;
* Public Procurement Law No 4734 allows for expropriation of land for construction projects;
* Settlement Law No 5543 allows for expropriation for construction of facilities such as airports, factories, economy and defence;
* Law No 5366 gives municipalities extensive authorisation to implement housing development projects, and allows municipalities to declare an area a regeneration area and evict, expropriate and demolish property;

The law also outlines parameters in which expropriation can take place.

Law No 4650 provides that an administration cannot initiate expropriation without first providing adequate funds in compensation.[[48]](#footnote-48)

### If so, are those laws or regulations applicable in the event of a disaster?

Please see the answer at section 4.2(a), and in particular, the reference to Law No 3634.

## Relocation

### Are there laws or regulations governing relocations?

There are numerous laws governing relocation. Law No 5543 contains resettlement provisions that envisage relocations being adequate for the family that the land was expropriated from, given their economic resources.

Under Law No 2942, if the administration does not take any action to implement the public services that the land was expropriated for within five years from the date that the price of the land was finalised, the previous owner has a year to repurchase the land at the expropriation price.[[49]](#footnote-49)

* + 1. Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?

No.

## Compensation for Expropriation and Relocation

### Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?

Article 46 of the Constitution stipulates that the state can expropriate privately owned real estate provided that compensation is paid in advance. There are specific rules regarding the valuation of land affected by the expropriation process and compensation to affected people.

Law No 2942 (as amended by Law No 4650) (the "Expropriation Law") sets out the framework under which compensation is paid to individuals if they can prove they are the owners of real estate expropriated for public interest under the same law. The value of the land is assessed by an assessment committee, and the landowner is then invited to negotiate if they disagree with the proposed value. If the owner can't be located, the matter must go to the court and the court will need proof that every effort has been made to locate the owner.

Payment of compensation must be made within 45 days of the date that the value of the property is agreed. Full cash payments must be made before the administration can acquire the land. All valuation claims must be settled before the land is transferred. The expropriating administration is required to pay for all legal costs associated with the transfer, owner identification and failed negotiations.[[50]](#footnote-50)

As the procedure laid out under the Expropriation Law is lengthy, and sometimes requires court involvement, the government has often taken advantage of the mandate in Law No 3634, where they can expropriate in situations of "extreme urgency," which allows for an expedited process. This allows the government to seize property before completing the expropriation procedure.

### In practice, are these laws or regulations adhered to?

It has been observed that administrations do not always use valuation methods defined by law and there has been increasing concern that land-valuation methods are unscientific and subjective.

A study has claimed that compensation for property owners in rural areas is particularly insufficient. These individuals often have no income and rely heavily on their property for crop and livestock farming. These individuals are sometimes forced to resettle in the suburbs of large cities. Compensation calculations do not take into account social impact or allow for the displaced individuals to find equivalent shelter with an equivalent standard of living.

Land owners can appeal any legal infringements to the Turkish Constitutional Court and the European Court of Human Rights.

In 2017, the Constitutional Court ruled in favour of the claimants, consisting of four villagers, who applied on the grounds that expropriation proceedings were a violation of their property rights under Article 35. The court ruled that the procedure in Law No 3634 can only be used for exceptional cases such as war or national mobilisation and that the correct procedure was not followed in the instant case.[[51]](#footnote-51)

# National Framework and Actors

## Are there laws/regulations/policy guiding shelter provision in disaster response and recovery?

The Temporary Protection Regulation 2014/6883, 22 October 2014 ("TPR") and the Law No 6458 on Foreigners and International Protection, 11 April 2013 ("LFIP") are the main pieces of legislation in this area. The Ministry of Interior Directorate General of Migration Management ("DGMM") also sets related policy.[[52]](#footnote-52)

The TPR does not provide a right to government-provided shelter, as such, for temporary protection beneficiaries. However, Article 37(1) TPR, as amended in 2018, authorises the DGMM to build camps to accommodate temporary protection beneficiaries. These camps are officially referred to as Temporary Accommodation Centres. A further amendment to the LFIP in 2018 sets out provisions on the financing of camps set up by DGMM.

Articles 23 and 24 TPR authorise the DGMM to determine whether a temporary protection beneficiary shall be referred to one of the existing camps or allowed to reside outside the camps. Article 24 TPR states that those temporary protection beneficiaries living outside the camps who are in financial need may be accommodated in other facilities identified by the Governorate.[[53]](#footnote-53)

## Which government agency takes the lead in housing/shelter/land issues in peace time and in disasters?

The main government agency in this area during times of emergency is the DGMM. The DGMM is designated as the competent agency authorised to decide on the eligibility of persons for temporary protection in Turkey in light of the scope laid down by the Presidency declaration decision No 4 of 15 July 2018 and the general eligibility criteria laid down in TPR. Following a reform in March 2018, responsibility for accommodation and other services also lies with the DGMM. The agency has therefore taken over responsibility for all measures relating to temporary protection which were previously the responsibility of the Disaster and Emergency Management Authority ("AFAD").[[54]](#footnote-54)

The Ministry of Environment and Urban Planning (formed by a merger of the Ministry of Public Works and the Ministry of Development and Housing) is responsible for the environment, public works and urban planning in Turkey and takes the lead in setting housing/shelter/land policy in peace time.[[55]](#footnote-55)

## What other government agencies are involved in shelter issues in disaster response?

AFAD was previously involved in shelter issues but as of 2018 the DGMM has sole responsibility.

## Is there a shelter cluster in Turkey? If so, how does this function?

The shelter cluster in Turkey is formed of a Basic Needs Working Group and was established at the beginning of the conflict in Syria. It reports to the Syria Task Force in Ankara, and so the responsibilities and authority of the Working Group are defined by the Syria Task Force and are related to coordination, cooperation and information-sharing with other agencies working to provide shelter and disaster relief. It supports the government of Turkey to meet the most pressing needs of refugees in camps and those living in urban, semi-urban and rural areas. This includes Shelter as well as Water, Sanitation and Hygiene (“WASH”) assistance.

The UNHCR and the World Food Program are the lead agencies in the area and co-chairs of the Working Group, coordinating the efforts of 143 member organisations in a cross border operation. Permanent membership is open to any organisation involved in providing shelter and disaster relief, allowing for realities in the field to be accurately reflected and for organisations to link up with other organisations offering different types of support. Temporary membership is open to any organisation implementing specific programmes such as winter support programmes or emergency response.

Monthly coordination meetings take place at national and local levels, with the option of calling ad-hoc meetings when relevant. Meetings in Gaziantep cover issues relating to the South-East only, while meetings in Ankara of the national Working Group cover broader topics.

As well as working on shelter projects, the Working Group supports people in need within displaced, hosting and non-displaced populations by providing rehabilitation services to individuals.

The Working Group also runs a programme whereby landlords agree not to force tenants who are refugees to leave in exchange for the Group funding upgrades to the accommodation. They also fund building upgrades (e.g. new doors on stairs) where buildings are shared between Turks and refugees and communal upgrades such as improvements to parks or schools owned by local authorities.

The UNHCR and CARE also fund a ‘relocation allowance’ equivalent to three months’ rent paid to refugees when they move out of a refugee camp.

Moreover, the S/NFI Cluster provides its membership with guidance on minimum standards and researches shelter alternative solutions.

The Information Management Unit within the S/NFI Cluster provides assistance in addressing operational gaps, avoiding overlaps with the other hubs throughout the Syrian Secretariat. It assists the UNHCR in sector oriented assessment through desktop and secondary data review and delivers information management training to local organisations.[[56]](#footnote-56)

## Does IFRC or the host NS have a recognised role in shelter in the country?

Yes, the IFRC has a presence in Turkey as the Turkish Red Crescent Society ("TRCS").[[57]](#footnote-57)

## In previous disasters, were beneficiaries of shelter assistance required to provide proof of security of tenure? If so, which actors required proof and what type of evidence was necessary?

There is no evidence to make clear whether beneficiaries of shelter assistance have previously been required to provide proof of security of tenure.

## What is the breakdown of the different forms of tenure identified in this Factsheet? If possible, please provide statistics and identify differences between urban and rural areas.

Please refer to the information provided under section 2.1.

## Are there in-country agencies active in working in HLP rights, or who could assist with understanding further information on HLP rights?

There are two such agencies worthy of note: the TRCS and the National Society.

Established in 1868, the TRCS is the largest humanitarian organization in Turkey. Its 168 branches and 5,412 staff countrywide support vulnerable people living in Turkey and abroad. The TRCS has played a leading role in helping refugees in Turkey stemming from the conflict in Syria since 2012, supporting some 1.5 million displaced people in protection camps and urban settings through the IFRC International Appeal. Currently, 15 community centres in 14 cities throughout the country are managed by the TRCS which facilitate daily activities and services for migrant and host community members.

The National Society is an established and influential entity in Turkey, and works closely in cooperation with the government ministries and agencies in its mission to provide assistance to vulnerable people in both emergency and non-emergency times. The National Society reacted immediately to the influx of Syrians and other refugees following the crisis in Syria by deploying volunteers and organising dedicated structures to receive and protect people in need, and providing a first-line of response.[[58]](#footnote-58)

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