

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 26/19, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of mistreatment of asylum seekers and migrants by law enforcement officials, involving threats to their physical and mental integrity, excessive use of force, confiscation of their possessions, extortion of money, summary returns at the border with Turkey and systematic detention of asylum seekers and migrants, including children, in overcrowded and unsanitary conditions.**

According to the information received:

Between March and November 2015, Bulgarian law enforcement officers forcibly blocked entry to Bulgaria to at least 59 asylum seekers and migrants and returned them to Turkey. Reportedly, many amongst them were stripped of their belongings and money and suffered physical violence at the hands of Bulgarian law enforcement officials. It is alleged that lethal firearms and dogs are used as a means of deterrence by law enforcement officials, and that on repeated occasions ammunition was shot in the air or in the ground as a warning, and guns were reportedly pressed against the foreheads of migrants. In October 2015, an Afghan national was reportedly killed by the Bulgarian border police. Migrants transiting in Bulgaria showed dog bites allegedly received as a result of attacks by police dogs.

Bulgaria punishes by criminal law irregular border crossing, with sanctions of up to six years for such acts. It is reported that effective sentences have not always been enforced, however, for persons caught crossing borders irregularly a second time, criminal sentences involving effective deprivation of liberty are applied.

Reportedly, on several occasions between March and November 2015, Bulgarian law enforcement officials extorted money from migrants on Bulgarian territory, before they were allowed to proceed without registration and cross the border to Serbia. Of 11 such incidents, migrants were detained at police stations for 24 hours, two of these arrests involved physical abuse.

It is alleged that migrants found, after irregularly entering Bulgarian territory, are systematically detained for periods of up to 18 months. Apart from requesting asylum, there is no alternative to legalize their stay and avoid detention and subsequent expulsion. The majority of asylum seekers are first placed in detention centers, even after they request asylum, before being transferred to open reception centers. Reportedly, children are also being detained. In cases where children are unaccompanied, some were allocated to adults to whom they have no familial ties, in order to present them as a “family” for detention purposes.

Conditions at detention centers in Bulgaria may amount to ill-treatment. It is reported that at the Lyubimets and Busmantsi detention centers very poor hygienic conditions prevail, only limited communication to the outside world exists, access to legal aid and interpretation is restrained, migrant children and adults are mixed, education for children is not granted and only limited access to health care exists, due to a lack of doctors, nurses and proper medication. Between March and November 2015, some irregular migrants reportedly endured verbal threats and beatings by guards while in detention.

At the Elhovo “Allocation Center”, reports received indicate lack of adequate food, limited access to health care, poor hygienic conditions, dirty and insufficient toilets, shared showering facilities for men and women, overcrowding, mixing of children with adults, tension amongst nationalities, inadequate ventilation, limited communication with the outside, insufficient access to interpreters and legal aid, and no access to education for children. Recommendations with regards to conditions at detention centers and the detention of children have been made and accepted by Bulgaria during the 1st and 2nd cycle of the UPR process.

Without prejudging the accuracy of the information made available to us, we wish to express grave concern about the lack of individual assessment and possibility for each applicant to state a claim outlying the risk they may face when returned to Turkey and thereby the potential violation of the international principle of non-refoulement in the event of returns. We also wish to express our concern about the excessive use of force displayed by law enforcement officials and the use of lethal firearms in the context of unarmed migrants seeking protection.

Serious concern is also expressed over the systematic detention of irregular migrants, whereas under international human rights law detention should always be a means of last resort. Additional serious concern is expressed about the detention of children, including unaccompanied children, where international human rights norms have repeatedly stated that the detention of children can never be in the best interest of the child. Further concern is expressed at the reported overcrowded and unsanitary conditions of detention centres, which may amount to ill-treatment.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries which may have been carried out in relation to the above mentioned. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please provide information relative to the measures taken to ensure the physical and psychological integrity of the migrants and asylum-seekers.
5. Please indicate any remedial action taken vis-à-vis the family of the Afghan national killed in October 2015.
6. Please provide information regarding the measures to be taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of migrants, in particular of vulnerable groups such as unaccompanied children.
7. Please provide information regarding access to justice by migrants, for violation of their human rights. In particular, please provide information about access to competent legal representation, access to legal assistance, access to proper information about one's case, access to interpreters and translators, access to effective guardianship arrangements for

unaccompanied minors, access to an effective remedy and the suspensive effect of recourse or appeal on any expulsion measure.

8. Please provide information on training of the border forces on: the proportionate use of force and the exceptional circumstances making use of force necessary and legitimate; human rights protection at borders training; and the treatment of vulnerable groups arriving at the border.
9. Please provide information on whether alternatives to the use of lethal firearms in border protection have been explored and what the outcome has been.
10. Please provide information on the possibility of exploring alternatives to detention of irregular migrants and asylum seekers.
11. Please explain all measures taken to avoid detaining migrant and asylum-seeking children, including through considering and implementing alternatives to detention.
12. Please provide information on measures taken to address the living conditions provided for migrants in transit, including quality of infrastructure, separation of adults and children, access to food, health care, and hygienic products, as well as access to legal aid and educational activities.
13. Please provide information on possibilities of changing the act of irregular border crossing from a criminal to an administrative offence.
14. Please provide information on what measures have been taken with regards to implementing the recommendations of the UPR process of 8 July 2015.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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First Vice-Chair of the Working Group on Arbitrary Detention

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

François Crépeau
Special Rapporteur on the human rights of migrants

Juan E. Méndez
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punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to remind Your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Bulgaria on 16 December 1986. In particular, we would like to draw the attention of Your Excellency's Government to Article 3 of the CAT, which urges States not to return a person to another State where she or he risks being tortured, and requests that States' determination procedures take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned. As a result, every state is obliged to give immigrants a fair opportunity to state a claim that an impending extradition, deportation or expulsion puts him or her at risk of torture or ill-treatment.

We would also like to refer Your Excellency's Government to paragraph 9 of the General Comment No. 20 of the Human Rights Committee which states that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.

We would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States "not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]."

Finally, we would like to draw the attention of your Excellency's Government to the thematic report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/25/60), which states that the non-refoulement obligation is a specific manifestation of the more general obligation of States to ensure that their actions do not lead to a risk of torture anywhere in the world.

The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the International Covenant on Civil and Political Rights

(ICCPR), ratified by Bulgaria on 21 September 1970, to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

In this context, we would like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means (principle 4). Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Furthermore, principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials allows the use of force against persons in custody or detention only when strictly necessary to maintain security and order within the institution, or in self-defence. Furthermore, Principle 16 restricts the use of firearms against persons in custody or detention, to self-defence or the defence of others against immediate threat of death or serious injury, or when strictly necessary to prevent a person in custody or detention from escaping provided such person has perpetrated a particularly serious crime involving a grave threat to life.

We would also like to bring to Your Excellency's Government's attention that, according to Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Your Excellency's Government has a duty to investigate, prosecute, and punish all violations of the right to life.

With regard to the systematic detention of migrants and asylum seekers, we would like to draw Your Excellency's Government's attention to Article 9.1 of the ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party"

(CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). For a more detailed overview of the international human rights standards governing the detention of migrants, including the obligation of States to always resort to alternatives to detention first, we would like to draw your attention to the Special Rapporteur on the human rights of migrants report to the Human Rights Council (A/HRC/20/24).

We would also like to refer Your Excellency's Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

We would like to recall to Your Excellency's Government that the ICCPR, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). We would like to recall the jurisprudence of the Human Rights Committee, according to which the State party has a special responsibility of care for an individual's life when in custody, and that it has to take adequate and appropriate measures to protect his/her life.

Furthermore, in connection with the treatment of unaccompanied minor asylum seekers, we would like to refer Your Excellency's Government to the Convention on the Rights of the Child, ratified by Bulgaria on 3 June 1991. In particular, Article 20 reads: "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State." According to Article 37 (c), "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances". This article shall be read in the light of Article 3 of the Convention, which provides that the best interests of the child shall be a primary consideration.

We would further like to refer to the following norm, which is particularly relevant to the situation described above:

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 31: The appropriate authorities shall endeavor to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision. Commission on Human Rights resolution 2002/62, entitled “Human rights of migrants” “ Calls upon States to protect all human rights of migrant children, particularly unaccompanied migrant children, ensuring that the best interests of the children are the paramount consideration, and underlines the importance of reuniting them with their parents [...]”

With regard to the conditions of detention, we would like to draw the attention of Your Excellency’s Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the “Mandela Rules”). We would also like to draw Your Excellency’s Government’s attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

We would like to draw Your Excellency’s Government’s attention on article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESC), ratified by Bulgaria on 21 September 1970, which states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.

With respect to the allegations of serious lack of access to medical care in detention, we would like to recall to Your Excellency’s Government that this right is reflected, inter alia, in article 12 of the ICESC, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We also wish to refer Your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that States are under the obligation to respect the right to health by, inter alia, refraining from interfering directly or indirectly with the enjoyment of the right to health, from denying or limiting equal access for all persons, including minorities, asylum seekers and illegal migrants, to preventative, curative and palliative health services, and from enforcing discriminatory practices as a State policy (para.34). Moreover, the right to health is closely related to and dependent upon the realization of other human rights, as contained

in the International Bill of Rights, including human dignity, non-discrimination, privacy and right to information (para.3).

We would also like to draw Your Excellency's Government's attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Further, the Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the "Mandela Rules"), Rule 22(2), provide that "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed". We would also like to draw Your Excellency's Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988), which provide that "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24). We would also wish to refer your Excellency's Government to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).