

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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 capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 26/19, 25/32, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the Government of The Republic of Austria's plans to increase policing along the former Yugoslav Republic of Macedonia's southern border with Greece which may result in mass expulsions and refusing entry to those in need of international protection thereby violating the Republic of Austria's obligation to respect the international human rights and humanitarian principle of non-refoulement.**

According to information received:

At a meeting held in Zagreb on 18 February 2016, and as a follow-up to the meeting in Skopje on 3 February 2016, the Heads of Police Services of the former Yugoslav Republic of Macedonia, Serbia, Croatia, Slovenia and Austria agreed that the migration flow along the Western Balkans route has to be reduced to the greatest possible extent.

The "Joint Statement of Heads of Police Services" released at the end of the meeting in Zagreb proposes only to grant entry to those "arriving from war-torn areas, are in need of international protection (for example Syria and Iraq) and are in possession of identity documents or can prove their nationality (they are in possession of their identity documents or can prove their nationality by language

proficiency, copies or scans of other identification documents)...”. Those who enter the former Yugoslav Republic of Macedonia irregularly and may have other grounds for which to seek asylum will not be granted entry. The plan also limits entry and transit to daily quotas.

Grave concern is expressed regarding this new policy designed by the former Yugoslav Republic of Macedonia, Serbia, Croatia, Slovenia and Austria which may result in “push-backs” and force migrants to adopt more risky routes and modes of transport, putting them at greater risk of abuse by smugglers and further denying them the international protection that the Republic of Austria is obligated to provide under international human rights and refugee law-particularly with regard to the principles of non-discrimination, non-penalization and non-refoulement. Serious concern is also expressed regarding the way in which the Joint Statement defines a refugee and the criteria used to determine who is in need of international protection which is in direct contradiction to international and human rights and refugee law to which your Excellency’s Government is a state party. Further concern is also expressed regarding discrimination on the basis of nationality because certain nationalities are refused entry for claiming asylum solely on the basis of their nationality.

It is also troubling that the agreement appears to enable the collective expulsion of non-nationals, acts explicitly prohibited under international law. The prohibition against collective expulsion entitles every non-national to an individualized examination of all the arguments used against his or her removal. It represents an important due process guarantee to prevent arbitrary expulsions of non-nationals. An integral element of the right to protection from collective expulsion and the right of access to an effective remedy is that an expulsion is stayed until its compliance with international human rights law has been finally determined.

Furthermore, given the primary duty of the police to protect people, concern is expressed regarding the lack of special measures envisioned at protecting people who might be particularly at risk of human rights violations, including children, persons with disabilities, LGBT persons, older people, victims of torture or victims of gender-based violence or trafficking.

Additional concern is raised regarding the possible violation of the EU Dublin III Regulation which provides enhanced safeguards for applicants for international protection in Europe and recent European Court of Human Rights and European Court of Justice which gave rulings to the effect that States should no longer transfer any applicants to Greece.

While we do not wish to prejudge the accuracy of these allegations they appear to be in contravention of the principle of *non-refoulement*. In this connection, we would also like to remind your Excellency’s Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) to which the Republic of Austria ratified on 10 September 1978, are not limited to citizens of States parties but “must also be available to all individuals, regardless of their 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". Additionally, we would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee. Moreover, we would like 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), which the Republic of Austria ratified on 29 July 1987 and wish to draw the attention of your Excellency's Government to its article 3 which provides for respect of the principle of non-refoulement. 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. In addition, allow us Excellency to recall that Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

We would also like to draw your Excellency's Government's attention to the Dublin III Regulations (Regulation (EU) No 604/2013 Of The European Parliament and of the Council of 26 June 2013) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) which provide enhanced safeguards for applicants for international protection in Europe, including: the respect to family life through the facilitation of family reunification; the right to a personal interview; and clause designed to avoid human rights breaches (article 3.2), whereby a State will not be permitted to transfer a person if there is a risk that s/he will be subjected to inhuman and degrading treatment in another Member State. This means that from now on States will be obliged to undertake their own assessment of the situation, rather than continuing to apply the Dublin Regulation until the European Courts give a decision to the contrary.

Finally with regard to discrimination based on nationality we would like to refer your Excellency's Government to the principle of non-discrimination in article 2 of the Universal Declaration of Human Rights, articles 2, 6 and 26 of the ICCPR, articles 2, 4c of the International Covenant on the Elimination of all Forms of Racial Discrimination; as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms without

discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms.

The full text of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response of the initial steps taken by your Excellency's Government to safeguard the rights of the above mentioned persons in compliance with international instruments.

In connection with the above alleged facts and concerns, please note that a similar letter has also been sent to the Governments of the former Yugoslav Republic of Macedonia, Croatia, Slovenia and Serbia.

As 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 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 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.
3. Please provide information on how, during the implementation of this agreement with the former Yugoslav Republic of Macedonia, will continue to comply with its international obligations to protect individuals from *non-refoulement* pursuant to the Convention against Torture and the 1951 Refugee Convention.
4. Please provide information with regard to how mass expulsions- particularly of specific nationalities- will be prevented from being carried out?
5. Please provide information regarding how the proper identification and protection of all potential protection needs, including individual assessments, age assessment, claims for asylum and other vulnerabilities regardless of their nationality or place of residence in a "safe third country".
6. What happens to irregular migrants who are refused entry once the daily quota of irregular migrants arriving into the country is met?

7. Please provide information regarding how the Dublin III Regulation safeguards for applicants for international protection in Europe will be implemented especially for those seeking family reunification.
8. Please provide information regarding how this agreement is not in contravention to recent European Court of Human Rights and European Court of Justice rulings to the effect that States should no longer transfer any applicants to Greece.
9. Please provide information with regard to whether the police officers being deployed at the border have human rights protection at borders training.

While awaiting a reply, we urge that your Excellency's Government re-consider the adoption of the above measures and consider alternative measures to tackle the situation of migrants from a human rights perspective.

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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