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SPECIAL PROCEDURES OF THE
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Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the human rights of migrants; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolutions 15/22, 17/12, and 16/33.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the increase in xenophobic and racist attacks, the entry for the first time into Parliament of the far right wing political party Golden Dawn, as well as the implementation of policy measures targeting migrants and asylum seekers in the area of health including the mandatory medical testing and administrative detention of migrants and asylum seekers based on health status. These incidents and developments illustrate a worrying general pattern of racism, racial discrimination and xenophobia against foreign nationals, migrants, asylum seekers and refugees which is emerging in Greece.

According to the information received:

Several incidents of racially motivated violence and attacks against foreign nationals, migrants, including undocumented migrants and asylum seekers occurred in different places across Greece. Migrants living in Greece have been reportedly targeted in at least 300 violent attacks from April to June 2012. Allegedly, xenophobic violence has reached alarming proportions, including in Athens. Attacks included both physical attacks and verbal abuse, including victims being dragged off buses, beaten, stabbed, scarred for life, insulted and

exhorted to leave Greece. Reportedly, so-called “citizens groups” have emerged in the city center as self-appointed neighborhood watch units to patrol the streets and protect residents by getting rid of migrants.

The latest in a series of attacks against migrants was the killing of a 19-year-old Iraqi man on 12 August 2012, who was allegedly stabbed by a group of five individuals in central Athens. On the same morning, these five individuals had reportedly already attacked a Romanian and a Moroccan, who managed to escape. The Public Order Minister, Nikos Dendias, offered his condolences to the dead man's family and declared that the Government and judiciary would be unrelenting in their efforts to punish the perpetrators.

Allegedly the recent surge in xenophobic and racist attacks against migrants, asylum seekers, refugees and foreigners is linked to the rising influence of the Golden Dawn far right political party, which incites racial discrimination and propagates xenophobic and anti-migrants discourse. Golden Dawn entered Parliament for the first time after winning almost 7% of the vote during national legislative elections held on 6 May 2012, and it had a similar share in the legislative elections on 17 June 2012. Golden Dawn members reportedly have also been involved in several attacks committed against foreigners and migrants, including on 12 June 2012 in the Perama neighborhood of Pireaus where 20 members of Golden Dawn allegedly attacked a house where five Egyptian fishermen lived, causing damage and seriously injuring one of them. Furthermore, according to information received, approximately 50 % of Greek police officers declared having voted for Golden Dawn in exit polls in large urban regions, such as Athens and Thessaloniki.

It was alleged that the authorities failed to prevent and address the rising wave of racism and xenophobia and punish those responsible for racial violence and provide victims with the right to remedy. As a result, many victims of xenophobic attacks reportedly are reluctant to seek justice. It was reported that in some cases the police discourages the victims from filing complaints and threaten undocumented migrants with detention if they persist in seeking justice. Allegedly, there has been no single trial against the perpetrators for racist attacks, and racial motivation as an aggravating circumstance has not been applied since it was introduced under the law in 2008.

It was also reported that an amendment to article 13 of Presidential Decree 114/2010 on the establishment of a single procedure for granting refugee status or subsidiary protection to aliens or to stateless persons was adopted in April 2012 (Law 4075/11.04.2012). The amendment reportedly provides for detention of migrants and asylum seekers if they represent a “danger to public health”, when they “suffer from an infectious disease”, “belong to groups vulnerable to

infectious diseases” (assessment is permissible on the basis of country of origin, status as an intravenous drug user or a sex worker), and are living in “conditions that do not meet minimum standards of hygiene”. The amendment allegedly requires mandatory health examinations and appropriate hospitalization for individuals in these categories. It was also alleged that the amendment was formally justified on grounds that high concentration of irregular migrants, particularly in Athens and other major urban centres, creates serious risks to public health considering the living conditions of migrants and the infectious diseases prevalent in their home countries.

While we do not wish to prejudge the accuracy of these allegations, and while we recognize the challenges faced by your Excellency’s Government due to the current economic crisis and the burdens it may carry as the main entry point into Europe for many migrants and asylum-seekers, we would like to express our concerns at the increase in racism, racial discrimination and xenophobia against foreign nationals, migrants, refugees and asylum seekers in Greece.

We would like to remind to your Excellency’s Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which it ratified on 18 June 1970, in particular articles 2, 4, 5 (b) and 6. Furthermore we would like to draw the attention of your Excellency’s Government to General Recommendation No. 30 on Discrimination Against Non-Citizens of the Committee on the Elimination of Racial Discrimination which recommends to:

“7. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and that the implementation of legislation does not have a discriminatory effect on non-citizens; 11. Take steps to address xenophobic attitudes and behavior towards non-citizens, in particular [...] racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens; 12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials”; 18. Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence; 23. Ensure that claims of racial discrimination brought by non-citizens are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny”.

We also recall the recommendations accepted by Your Excellency’s Government under its Universal Periodic Review on 9 May 2011 to take steps to prevent attacks against immigrants, ensure that asylum-seekers and irregular migrants are treated

according to Greece's human rights obligations, devise a long-term Government strategy aimed at integration of immigrants.

We would also like to refer to the recommendations made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance regarding the responsibility that political leaders and political parties have in refraining from disseminating discourses that scapegoat vulnerable groups, condemning all political messages that disseminate ideas based on racial superiority or hatred and that incite racial discrimination or xenophobia, and promoting multiculturalism, tolerance, mutual understanding and respect with their societies (A/HRC/20/38).

In this context we recall that any form of impunity for crimes motivated by racist and xenophobic attitudes weakens the rule of law and democracy and tends to encourage the recurrence of such acts. Therefore, it is of utmost importance to ensure that those responsible for crimes with racist or xenophobic motivation are prosecuted and adequately sanctioned and the victims provided with effective access to legal remedies as a result of a racist or xenophobic crime.

Furthermore we recall paragraph 30 of the Durban Programme of Action which "urges States to develop and implement policies and action plans and to [...] implement preventive measures in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated [...] by individuals or groups [...]; (c) implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life".

We would also like to draw the attention of your Excellency's Government to Human Rights Council Resolution 15/16 and General Assembly Resolution 66/172, which call upon States "to respect the human rights and the inherent dignity of migrants" as well as "strongly condemn the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them".

Regarding the allegations of mandatory detention of certain categories of migrants and asylum seekers due to their health condition, we would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), ratified by Greece on 5 May 1997, 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 ICCPR further stipulates that all persons deprived of their liberty must be ensured the right, without delay, to control by a court of the legality of the detention (art. 9 (4)). The human rights legal framework governing detention is guided by the principles of necessity, reasonableness in all the circumstances, and proportionality. The starting point is that no one shall be subject to arbitrary or unlawful detention (ICCPR article 9(1)). Detention should accordingly be a measure of last resort and as the result of an individual determination, must only be applied in exceptional circumstances, be prescribed by law, meet human rights standards, be subject to periodic and judicial review and, where used, last only for the minimum time possible. Under no circumstances should certain categories of migrants and asylum seekers be subjected to mandatory detention based on their health condition. We would also like to refer to the recommendations of the Special Rapporteur on the human rights of migrants concerning the detention of migrants in an irregular situation (A/HRC/20/24). The Special Rapporteur looks forward to discussing issues relating to the detention of migrants with your Excellency’s Government during his forthcoming visit to Greece in November 2012.

With regard to the right to the highest attainable standard of health, we would like to recall that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded by your country on 16 May 1985), 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 the State to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination.

In addition, we would like to draw your attention 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). And finally, the right to health contains both freedoms, including from interference and non-consensual medical treatment, and entitlements, including the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health (para.8).

As it is our responsibility, according to the mandates entrusted to us by the Human Rights Council, to seek to clarify all allegations brought to our attention, we would highly appreciate detailed information from your Excellency’s Government

concerning the above cases and the measures taken by the authorities to address it this in conformity with international human rights standards. We would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the summary of the case accurate?
2. Have complaints been lodged by or on behalf of the alleged victims?
3. Please provide the full details of any investigation, judicial or other inquiries and prosecution carried out against individuals responsible for the alleged xenophobic and racist attacks against migrants, and specify whether in this context racial motivation was retained. If not, please explain why.
4. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators? Please also indicate whether compensation has been provided to the victims or the families of the victims.
5. Please provide information on any investigation undertaken regarding allegations of police inaction in relation to crimes against migrants committed by Golden Dawn members.
6. Please provide information on the measures taken to prevent the recurrence of racist and xenophobic acts, to guarantee their rights and freedoms without discrimination, and to foster tolerance, mutual understanding and social harmony between citizens and non-citizens, and promote respect for cultural diversity.
7. Please provide information on the measures taken to guarantee the enjoyment of the right to physical and mental health of migrants and asylum seekers and to ensure that the amendment to the Presidential Decree 114/2010 is in compliance with Greece's international human rights obligations.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the foreign nationals, migrants, refugees and asylum seekers in Greece are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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discrimination, xenophobia and related intolerance

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