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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 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 resolution 15/22, 17/12, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **conditions of detention for migrants in an irregular situation, allegedly resulting in the deaths of three persons, one due to health reasons and two due to suicide, as well as serious lack of access to medical care in detention**. We would also like to bring to your Excellency's Government's attention information we have received concerning **the current situation of the Bangladeshi strawberry pickers who were shot at on 17 April this year**.

According to the information received:

On 27 July 2013, Mr. **Mohammad Hasan**, a 28 year-old Afghan migrant who had been detained in Greece for almost 11 months, died in a hospital in Athens. Allegedly, he had AIDS, and was complaining of chest pain, and had repeatedly asked to be taken to a hospital, but the police authorities at Korinthos detention centre, where he was being detained, rejected his requests. On 7 July 2013, he was finally taken to Korinthos hospital and then transferred to intensive care at Sismanoglio hospital in Athens. However, the treatment he finally received was too late, and he died, reportedly due to a respiratory infection. It is reported that his life could have been saved if he had been on antiretroviral treatment, and if he had received medical attention earlier.

Furthermore, in two recent incidents in police facilities in Kozani and Grevena, two migrants allegedly committed suicide while in detention. A 26-year-old Pakistani national, who had been detained at Servia police station in Kozani, northern Greece, for entering the country irregularly, was reportedly found dead in the bathroom of the police station on 12 July 2013. Previously, a 20-year-old irregular migrant from Cote d'Ivoire, detained at a Grevena police station, northwestern Greece, waiting to be deported, had also been found dead in a bathroom.

It is further reported that a 33 year-old Congolese man, who has been hospitalized in Alexandroupolis for several months, needs to have both his legs amputated due to leptospirosis. He reportedly developed the disease following seven months of detention in the pre-removal facility of Komotini, without appropriate access to medical care, combined with bad hygienic conditions in detention. Leptospirosis is a life threatening disease which is transmitted to humans from animal urine, in particular rodents, and is directly related to substandard hygiene conditions. It is alleged that the patient was infected while in detention, as the incubation period for the disease is shorter than 20 days and the patient had already been in detention for seven months when he became ill.

Additionally, a 28-year-old Afghan national, suffering from a serious disease, is reportedly hospitalized in Nikaia General Hospital, after having been detained for months in Amygdaleza detention centre.

It is reported that a riot took place at Amygdaleza detention centre on 10 August 2013, triggered inter alia by the inhuman detention conditions. While information was released that 10 police officers were injured, no information has been released about any injuries sustained by the detainees. Moreover, it is alleged that no one has been allowed access to the centre since the riot took place, including lawyers and NGOs.

These tragic incidents highlight the inhuman treatment of irregular migrants detained in Greece. It is reported that the policy of systematic prolonged detention in inhuman conditions which has been applied by the Greek authorities since August 2012 in the context of Operation "Xenios Zeus" has severely deteriorated the situation for migrant detainees. This policy is applied even to asylum seekers and people who cannot be deported, in violation of Greek law. The Pan-Hellenic Union of Police Officers reportedly expressed concern at the inadequate detention conditions for migrants in a document dated 28 June 2013. The Union stated that the situation is very dangerous for the mental health of the detained migrants, and that many detainees are at risk of suicide.

In his report following his visit to Greece in October 2010 (A/HRC/16/52/Add.4) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found the conditions of detention in police stations, Criminal Investigation Departments (CID), border-guard stations and migration detention

centers to be very poor throughout the country (Para. 41). The detained migrants were frequently held in police cells not designed for prolonged detention for up to six months. They neither provided any meaningful activities nor access to outside exercise and fresh air. The cells were often overcrowded forcing detainees to share mattresses or sleep on the floor. They frequently provided insufficient natural lighting and poor ventilation. [...]As a result of the poor conditions many people had respiratory, skin as well as psychological problems. Access to medical care was very limited. Many detainees complained that they had no access to a doctor and even upon specific request were denied to be brought to a hospital. (Para. 42). The Special Rapporteur concluded that the conditions in all facilities he visited to detain migrants awaiting deportation, with the exception of the Mersidini Migration Detention Centre, were not in conformity with the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, or the Standard of Minimum Rules for the Treatment of Prisoners. The prolonged detention of migrants under the conditions of detention described amounts to inhuman and degrading treatment, in violation of articles 7 and 10 of the International Covenant on Civil and Political Rights (Para. 47).

During the visit of the Special Rapporteur on the human rights of migrants to the country in November and December 2012, he also observed the inappropriate detention conditions and insufficient medical services in Greek detention facilities for migrants. The information received indicates that the conditions may have in fact worsened since his visit, including notable gaps in the provision of medical care.

Additionally, on 17 April 2013, a group of approximately 150 Bangladeshi strawberry pickers were shot at by three Greek foremen after having demanded six months unpaid wages. Around 30 of them sustained injuries from the shooting; eight were reportedly seriously injured. The incident took place in the village of Nea Manolada, in the Ilia region. A few days later, the Minister of Public Order and Citizen Protection reportedly promised that the victims would receive permits to stay in Greece, compensation and subsistence support. However, four months later, the victims of the Nea Manolada shooting are allegedly left stranded in the greenhouse slum where they were living and were eventually shot at, trying to recover from their injuries in an unhygienic environment. It is reported that some of the victims may be recognized as victims of trafficking, and will proceed with acquisition of residence permits. However, around half of them are still waiting for the government to recover their wages and provide them with residence permits, as they were reportedly promised.

Grave concern is expressed regarding the inappropriate conditions of detention, which could amount to cruel, inhuman or degrading treatment, and related deaths. While noting information that the perpetrators have been prosecuted, concern is also expressed regarding the lack of compensation and support for the victims of the Nea Manolada shooting.

Without in any way implying any conclusion as to the facts, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding these cases. With regard to the death of detained migrants, we would like to recall that the International Covenant on Civil and Political Rights (ICCPR), which the Government of Greece acceded to on 5 May 1997, 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 the case of suicide in detention, State authorities can be responsible, by omission, for not taking adequate measures to protect the person's life, as required by article 6 (1) of the Covenant.

In addition and in order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government ratified on 6 October 1988. We urge your Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of all the above-mentioned persons, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

With regard to the systematic detention of migrants and asylum seekers, we would like to draw your 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' 2012 report to the Human Rights Council (A/HRC/20/24).

With regard to the conditions of detention, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your 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.

With respect to the allegations of serious lack of access to medical care in detention, 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 to by Greece 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 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 irregular 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 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, 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 attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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).

With regard to the shooting of the group of Bangladeshi strawberry pickers on 17 April 2013, we would also like to draw your Excellency’s Government’s attention to paragraph 18 of the General Comment No. 2 of the Committee against Torture (CAT/C/GC/2, 24 January 2008), where the Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. We would also like to refer to the International Covenant on Economic, Social and Cultural Rights, and in particular its article 7, which provides the right of everyone to just and favourable conditions of work, including fair wages, a decent living and safe and healthy working conditions.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the circumstances surrounding the death of Mr. Hasan and the suicides in Grevena and Kozani. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the circumstances surrounding the shootings of migrants at Neo Manolada. Please also provide information on any resident permits and/or compensation given to the victims of the shooting.

4. Please provide information on how the Greek government has followed up on the recommendations in the report on the visit by the Special Rapporteur on the human rights of migrants to Greece (A/HRC/23/46/Add.4) concerning the detention of migrants and detention conditions, including in relation to ending the policy of systematic detention of all irregular migrants and instead explore alternatives to detention; and significantly improve detention conditions, including by ensuring that all detained migrants have access to proper medical care.

5. Please provide information on the measures taken to ensure the enjoyment of the right to physical and mental health, including adequate detention conditions and access to adequate medical treatment, of migrants and asylum seekers in detention.

6. Please provide detailed information on how labour inspections are carried out, in order to prevent exploitation of migrant workers and to ensure safe and healthy working conditions.

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 above mentioned persons 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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highest attainable standard of physical and mental health

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