

UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece

ATHENS (16 May 2016) - Following an invitation by the Government, I conducted a follow-up visit to Greece from 12 to 16 May 2016. During my 5-day visit, I visited Athens, Idomeni and Polykastro in Central Macedonia and the Aegean Islands of Lesbos and Samos. I met with government representatives, civil society organisations, international organisations, as well as migrants themselves, including in detention centres and informal camps.

I would like to express my appreciation for the support and cooperation the Government provided in planning and coordinating the visit. I would also like to sincerely thank the civil society organisations which helped in preparing the mission.

My mission to Greece has been carried out as a follow-up to my June 2013 report on Greece and my June 2013 thematic report on the management of the external borders of the European Union, for which I had also visited Tunisia, Turkey, Italy and the EU institutions in Brussels and Vienna, as well as to my June 2015 thematic report “Banking on mobility over a generation”, for which I visited Italy, Malta and the EU institutions in Brussels. I decided to conduct this follow-up study because of the unprecedented number of migrants and asylum seekers who have arrived in Greece in 2015, the high number of casualties at sea as well as the policy changes in different countries in the European Union and the latest EU-Turkey “statement”.

My report will be presented to the UN Human Rights Council in June 2017. I trust that my report will help the Greek Government and the EU institutions to develop durable human-rights-based solutions for migrants and asylum seekers in Greece, including on the important issue of the management of borders, and adopt strategic long-term migration and mobility policies in accordance with the fundamental principles of international human rights law.

The challenge for Greece

Greece has faced the biggest movement of migrants and refugees in Europe since 1945. It has shown real resolve – mostly from its own limited resources, during a time of imposed financial austerity – in putting in place a principled response to assist all irregular migrant and refugee arrivals.

The Greek-Turkish border is one of the main points of irregular border crossings into Europe, due to its geographical location. Most of those migrants wish to transit through Greece and travel towards northern Europe. With the decision of the Former Yugoslav Republic of Macedonia to close its border to Greece, more than 10'000 migrants who include older persons, families with babies and toddlers, pregnant women and persons with disabilities continue to live in squalid conditions in Idomeni. In all centres, volunteers and international organisations work to provide basic needs such as food, shelter, medical care and sanitation facilities. Beyond government services, civil society efforts have been commendable, the local authorities have provided much needed support, and local populations must be congratulated for their hospitality, their donations and their patience.

Another 20'000 to 30'000 people are stuck in open reception facilities or in unofficial camps, such as Helliniko Airport, throughout Greek mainland. In addition to that, with the EU-Turkey deal being implemented, migrants arriving after 20 March 2016 on the islands have only two options; to apply for asylum or being returned to Turkey. This has resulted in 90% of migrants now trying to apply for asylum in Greece, when it was only a trickle before.

The unfortunate use of mandatory detention

The law limits administrative detention upon arrival to twenty-five days. However in practice detention at times lasts longer. I deeply regret the Greek government's policy of increasing the use of detention of persons irregularly entering the Greek territory, including unaccompanied children and families.

I visited the Polykastro police station, the Elliniko detention centre for women, and the closed Reception and Identification Centres (RIC or "hotspots") in Samos and Lesbos. I am deeply concerned about the inadequate detention conditions everywhere and the particularly chaotic situation in the RICs. Despite the goodwill of many actors, the lack of coordination in 24/7 camp management, the length of process to identify vulnerable migrants, the blatant over-crowdedness which amplifies intercommunal frictions, the mix of families and young single males, the absence of many government services during the weekend, the contradictory information received regarding procedures and timelines, as well as the insufficient procedural safeguards in the detention facilities for migrants, are creating an unacceptable level of confusion, frustration, violence, and fear.

I spoke to representatives of many different groups who underlined the overwhelming insecurity due to lack of proper policing within the open reception centres and closed detention facilities. There is a need for effective and professional camp management, in order to ensure proper coordination and rationalisation of all activities by all actors, thus avoiding loss of control and overwhelming confusion, and ensure non-discrimination amongst nationalities, which is needed to build trust by promoting equality and fairness in accessing services.

I urge Greece to renounce the idea of detaining migrants, except for the shortest possible time, in cases – for example – of a documented risk of danger to others (which families rarely present). Incentives for introducing and following the registration and asylum procedures should be used instead. The current practice of allowing migrants to move freely within the island after registration as asylum seeker is a step in the right direction.

Devising adequate responses for minors

I have met unaccompanied children locked in police station cells 24/7 without access to the outdoors for over two weeks and was informed that some may stay for a month. I also met with whole families detained in closed hotspots for weeks on end. In both cases, the children were manifestly traumatised and distressed by the experience, as compared to children met in open reception centres and informal camps.

As determined by the Committee on the Rights of the Child, detention can *never* be in the best interest of a child. Even under the guise of “protective custody”, it is utterly unacceptable for children to be administratively detained. Alternatives to detention in the form of open shelters for families and unaccompanied minors, with appropriate counselling and services, must be established as a matter of urgent priority.

I welcome government proposals to develop a more structured system of guardianship for unaccompanied minors. Their protection and development require that a guardian be quickly appointed, have the necessary professional training, experience, expertise and competence (such as specialised social workers), and be appropriately supported with the necessary resources. The best interest of the child depends on the guardian being able to make the best and quickest decisions possible on all matters of concern to the child. A proper guardian must be appointed and a best-interest-of-the-child procedure put in place as key components of the treatment of unaccompanied minors.

The welcome development of open reception centres

On the mainland, the Greek government has quickly built a number of open reception centres and is in the process of equipping them with appropriate services: 30 are already open and 15 more are planned. Some facilities have not met yet the basic needs of migrants, such as adequate food and health services.

Creating trust between migrants, government officials and other actors is key: migrants should be attracted to the open reception centres by incentives and Greece must resist the temptation of moving them by force.

The lack of consistent and credible information in a frequently changing political environment

I received information from migrants and civil society organisations working with migrant communities that the procedures and timelines for applying for protection remain unclear. As a result of the recent changes triggered by the EU-Turkey “statement” in the complex asylum procedure, there is a lack of access to information regarding the rights of migrants, the protection mechanisms available to them, such as family reunification and relocation. Migrants and civil society organisations find the procedures difficult to navigate and are unable to get clarity about next steps and status of the applications.

I am however pleased that, in the coming weeks, information notes about the asylum procedure will be released in different languages and the Asylum Service will work with EASO to form information provision teams that will go to open and closed centres to provide information about the asylum procedure. I urge the government to also produce similar notes providing information about rights and obligations of all migrants that arrive, and to effectively use the individual assessment carried out for detecting vulnerabilities in order to provide better structured information.

The steady growth of the Asylum Service

The Greek Asylum Service has considerably strengthened during the past three years. The process has been steady, but slow due to constraints owing to the financial crisis. Moreover, the asylum system was never meant to absorb tens of thousands of claims in one go as is presently the case due to the closure of FYROM's border and the EU-Turkey "statement".

The Greek Asylum Service has opened seven Regional Asylum Offices and three Asylum Units all around Greece. Its present positive determination rate is 47%, which is much closer to European averages for the same nationalities than the previous 1%. However, it is clear that the Asylum Service is not in a position to cope with 50'000 applications for asylum any time soon. This is because it was not conceived for a spike of this magnitude. The Asylum Service is clearly understaffed, with officials and caseworkers struggling to cope with the demand of asylum requests. I therefore welcome the news that recruitments are being accelerated.

The Asylum Service lacks the necessary funds to ensure effective and speedy access to the asylum system: migrants have had difficulties navigating the pre-registration and registration systems in the past few months. In order to guarantee a fair process, it is of utmost importance that it be empowered and funded to recruit interpreters and provide legal aid services for an informed procedure.

In the circumstances, the asylum procedure is lengthy and complex. I welcome the news that the Asylum Service will significantly increase its capacity by end of June so as to increase the processing of asylum claims from 80 to 640 claims per day.

The fast-track procedure under derogation provisions in law 4375/2016 does not provide adequate safeguards. Principally, the procedure's priorities should not be based on one's nationality. Measures must be taken to ensure proper identification for persons with vulnerabilities (asylum seekers, children, migrants with illnesses or disabilities, victims of trafficking, victims of violence, persons in need of family reunification), individual assessment of the limited number of migrants for whom detention is necessary, formulation of the reasons why it is necessary, and release all the other migrants with an appropriate status. Only thus will the hardship experienced at present by many migrants be reduced.

A necessary institutional reinforcement

I welcome the ratification by Greece of the Optional Protocol to the Convention against Torture (OPCAT). The Greek Ombudsman is the National Preventive Mechanism. I urge Greece to provide the necessary resources to the Ombudsman's office in order to enable him to conduct regular and frequent unannounced visits to migration detention facilities all over the Greek territory.

The Office of the Ombudsman and the National Commission for Human Rights (NCHR) are important independent institutions, able to enhance the protection of the human rights of all in Greece, including migrants. I urge Greece to ensure them sufficient resources to perform their duties, to provide them with a meaningful level of participation in the elaboration of migration policies, as well as guarantee that they are empowered to perform a vigilant oversight of the treatment of migrants under any circumstances.

The central role of EU policies on the Greek response

The EU and EU member States have not developed a long term strategy regarding migration and mobility and the EU seems to always be reacting to current events without strategic and contingency planning, in the end often providing too little too late. Presenting the current situation as a humanitarian crisis only demonstrates short-sightedness. The real crisis in Europe resides in the lack of political will, resulting from the absence of a common political vision as to how migration and mobility are part of Europe's present and future.

In its struggle to maintain control of its external border, the EU is being tested on its adherence to human rights. Through slowly stripping away the rights of asylum seekers and migrants, Europe is creating a new 'normal' and forcing Greece – a country in the midst of an economic crisis – to carry an overwhelming responsibility in securing EU's external border, regardless of the human and financial costs. At the same time, by not condemning EU member state actions of violence and non-adherence to regional and international humanitarian and human rights laws, the EU has effectively condoned human rights violations committed by its member states.

The emphasis on securitisation doesn't fully work unless one really violates migrants' human rights, a tendency that has been kept in check by national and European courts and tribunals. Overreliance on securitisation of borders will only increase the suffering at borders.

The EU-Turkey "statement" of 18 March 2016 is a political "deal" without mandatory value in international law. Its legal basis is undetermined and it cannot be legally challenged in courts. Moreover, it is still uncertain whether it will be fully applied as the conditions for visa liberalisation for Turkish citizens travelling to the EU are still under negotiations. Additionally, Greece has been put under considerable pressure (verging on "bullying" according to certain actors) to implement it immediately, well before its entry into force, and to apply maximum constraints on migrants, in order to achieve the objective of returning most migrants to Turkey.

What is missing in this development is a thorough *ex ante* human rights impact assessment of the EU-Turkey "statement", which would cover all of its aspects, as well as a clear mechanism for *ex post* human rights oversight which would extend over several years so as to capture its changing features over time, especially considering the lengthy period it takes for claims of constitutional or EU human rights law violations to go to courts and tribunals.

The challenge for all actors is to find the appropriate policies for responding to the migration movements without infringing on the human rights of migrants, nor shunning the Rule of Law. The "migration crisis" is not simply a political problem: the full measure of the constitutional, European and international frameworks fully applies. Unfortunately, the behaviour of many actors in the EU, and especially in EU member States, seems to indicate that they consider human rights and the Rule of Law to be dispensable as regard migrants under the circumstances.

In 2015, the European Union made a commitment to relocate 66'400 people from Greece. Unfortunately, as of mid-May 2016, only 1170 persons had been relocated. I

call upon EU member States to meaningfully share responsibility with Greece which is struggling to provide human rights protections for migrants. EU member States must start to meaningfully relocate asylum seekers. The large number of irregular migrants stuck in Greece is mainly a result of EU and EU member States policies and practices. EU Member States need to urgently deliver on their commitments regarding resettlement and relocation. There is a strong need for solidarity and responsibility-sharing within the EU in order to ensure full respect of humanitarian needs and human rights for all these migrants.

Brutality, xenophobia and over reliance on securitisation of borders can only increase the suffering at borders. As I have said before on numerous occasions, Europe needs a long term vision for migration and mobility which sees European countries offering safe and regular channels for mobility for refugees (through robust and prompt resettlement programmes) and for migrants (through smart visa programmes allowing people to come and look for work). Only then will European countries take over the mobility market from the smugglers and regain full control of their borders, without infringing on the rights of migrants.

Preliminary Recommendations to the Greek Government:

- **Further develop and implement a long-term comprehensive migration strategy which has the human rights of migrants as its framework. Pursue the close collaboration and coordination closely with international organisations, such as UNHCR, ILO, OHCHR, and civil society to protect and promote the human rights of migrants and refugees in elaborating and implementing this strategy. Ensure that the migrant integration through language and work is central to such a strategy.**
- **Implement and fully respect regional and international human rights obligations and uphold the rule of law in favour of all migrants in the implementation of its migration policies.**
- **Conduct individual assessment of the limited number of migrants for whom detention is necessary and provide formulation of the reasons why it is necessary; strictly refrain from detaining unaccompanied minors or families with children in conformity with the principles of the best interests of the child and of family unity.**
- **Urgently consider alternatives to detention for all migrants, and especially unaccompanied minors and families with children. Detention should only be ordered in exceptional circumstances, as foreseen in National Law 4375/2016, Art. 46.**
- **Provide appropriate detention conditions in all centres, including in pre-removal centers, and ensure that all migrants deprived of their liberty are able to promptly contact their family, contact a lawyer which should be free of charge if necessary, seek asylum if requested, have access to a doctor and to an interpreter, have access to their mobile phone, and have the capacity to promptly challenge their detention.**
- **Address as a matter of priority the issue of unaccompanied minors; develop a substantial and effective guardianship system, ensure guardians underwent the necessary professional training, have the experience, expertise and competence (such as social workers), and are**

appropriately supported with the necessary resources; increase significantly the shelter capacity for unaccompanied minors.

- Enable children to exercise their right to education and health and involve all Ministries concerned; ensure access of all migrant children to the national health care system, including for all the vaccinations they need; ensure access of all migrant children to the national education system, making sure they can be enrolled in school as soon as possible.
- Provide clear and systematic information regarding all migration policies to all stakeholders, including migrants themselves and all those who have a responsibility to promote and protect the human rights of migrants, such as government officials, international organisations, civil society and lawyers. Provide human rights training to all government officials working with migrants, especially those who receive them at borders and in detention
- Guarantee effective and timely access to the asylum procedure; ensure an individual assessment; provide information in a language the migrants understand, informing the migrants on all their rights and protection mechanisms; provide access to legal aid and to an interpreter; ensure due process guarantees in the asylum procedure, with guarantees of a fair hearing, effective remedy, non-refoulement and non-collective expulsion.
- Establish a roster of lawyers and interpreters for easy access of the Asylum Service, First Reception Service and other authorities.
- Appoint immediately camp management for every hotspot and every open camp, in charge of coordinating activities of all actors and protecting the human rights of migrants; provide clear and public information with regards to the authority of the management at central level.
- Reinforce, in competent staff and resources, human rights institutions, such as the National Human Rights Commission and the Office of the Ombudsman, in order to allow them to effectively accomplish their mission, including in the oversight of all detention centers for migrants.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which would provide the Greek government with a useful framework for managing migration while ensuring the full respect for the human rights of migrants.
- Provide clarity regarding all procedures related to regularising migrants.

Preliminary Recommendations to the European Union:

- Ensure that the full protection of the human rights of all migrants, regardless of their status, is the primary consideration for its support to the Greek efforts in managing the movement of migrants entering EU territory and provide the necessary human and financial resources to fully and meaningfully support Greece.
- Further develop and implement a long-term comprehensive migration strategy which has the human rights of migrants as its core framework.
- Reaffirm its commitment to regional and international human rights obligations and uphold the rule of law in favour of all migrants in the implementation of its migration strategies and policies.

- **Ensure an independent and thorough human rights impact assessment to overview how the EU-migration agenda, the EU-Turkey statement and all future agreements on mobility and migration are carried out.**
- **Examine the EU's accountability under an agreement such as the EU-Turkey "statement".**
- **Support Greek authorities in providing alternatives to detention, especially in the management of the hotspots turned into closed detention facilities.**
- **Ensure the quick implementation of the decisions on relocation of asylum seekers from Greece, based on needs assessment rather than nationality; ensure a quick response to requests for family reunification and provide assistance in facilitating it; ensure the quick start of refugee resettlements from Turkey.**
- **Significantly increase the support to Greece on initiatives that improve the condition of migrants in the hotspots and in open reception facilities; significantly increase the support to Greek departments and institutions working directly with migrants; support the Asylum Service and First Reception Service in allocating the necessary funds to temporarily increase their staff; increase the support by other member States for qualified human resources.**
- **Support the European Network of Human Rights Institutions (ENHRI), the European Network of Ombudsmen and the European Network of Ombudspersons for Children (ENOC), in order to allow them so support their member institutions in providing full oversight of migration detention and service provision mechanisms.**