

**WORKING GROUP MIGRATION AND TORTURE
&
THE GREEK HELSINKI MONITOR (GHM)**

**Urgent appeal addressed to the Special rapporteur on the human rights of
migrants.**

***Greece: 14 illegally deported migrants claim for their right to be granted the
right to apply for asylum.***

1st February 2021

Members of the Working group:

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- **OYAMTA BALDAL** Ligue Tchadienne des Droits de l'Homme (réseau) /Tchad
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The SOS-Torture Migration and torture Working in group in Africa, is a group of 10 experts from the OMCT SOS-Torture network, which aims to analyze first-hand information in order to set out authoritative research and recommendations for the protection of migrants against torture and other punishments or cruel, inhuman or degrading treatment. The group is sponsored by the World Organization Against Torture (OMCT) and the Collectif des Associations Contre l'Impunité au Togo (CACIT).

The Working Group on Migration and Torture, Jointly with The Greek Helsinki Monitor (GHM) in light of the facts described below, urge the Special Rapporteur on the human rights of migrants, to take action and issue an urgent appeal to Greek authorities.

1. When and Where.

On November 28th, 2020, 18 migrants landed on the Greek island of Lesbos from Turkey to apply for asylum and were forcibly returned to Turkish waters by members of the Greek security forces almost immediately, the following day. The migrants claim that they were arrested, violently put in a boat for their transfer in Turkey. The Greek authorities and security forces have ignored their request to apply for asylum and not to be returned in a country where they risk being arrested, ill-treated and eventually returned to their countries of origin where they risk being tortured.

2. Victim(s).

The 18 migrants forcibly deported out of Greece presented several vulnerabilities. Three of them were unaccompanied minors of 16 and 17 years old and one other has just reached 18 years old. Three migrants were pregnant women who wanted to go to hospital or to a migrant camp. One of the women gave birth a week later.

The Greek Helsinki Monitor (GHM) has identified, 14 of these illegally deported asylum seekers and received their mandate to file a complaint and advocate on their behalf before Greek courts, authorities and international human rights mechanisms.

The migrants are currently all living in Turkey. Their full names and identities as well as a letter sent to the Greek authorities are available in the attached documents.

3. What happened.

The migrants have been victims of Greek government pushbacks policy that has consisted over the past years of returning migrants arriving on the coast without consideration of individual circumstances and without any possibility of applying for asylum.

The returning of these 14 migrants to Turkey violates the Greek Presidential Decree 114/2010 that guarantees to migrants including those aged above 14 (article 4.3) the right to access the asylum request procedure (article 4.1), to apply before competent authorities and be informed of their rights in a language they can understand including with the support of an interpreter (8, 9) and to remain on the territory while their application is been examined (article 5) on an individual basis (6.2).

These practices are illegal under international human rights law. Both the article 3 of the UN Convention against torture (UN CAT) and the article 33 and UN refugee Convention oblige the Greek state to allow migrants to apply for asylum and to have their request examine on an individual basis. Similarly, the UN CAT prohibits the Greek state to return migrants in a country where they risk facing torture and ill-treatment or deported in such state.

As the Committee against torture (CAT) said in its decision of the case Kwami Mopongo et al. v. Morocco as well as in its General Comments N°4, "collective deportation, without an objective examination of the individual cases in regard to personal risk, should be considered as a violation

of the principle of “non-refoulement” (CAT communication No. 321/2007, Kwami Mopongo et al. v. Morocco & CAT General Comment No. 4 (2017) §14)

Denying people access to asylum is inhumane and illegal. It may violate the fundamental principle of non-refoulement. By acting so, the Greek government might have forced these asylum seekers to potentially return to a country where they are liable to be subjected to torture and other form of ill-treatments. Some of the migrants are national of countries like Democratic Republic of Congo known as unsafe for women children and other vulnerable groups living in conflict areas.

In addition, three of the victims are unaccompanied minors, who are entitled to special protection under international human rights law, and especially under the UN Convention on the Rights of the Child (UN CRC). The UN Committee on the Rights of the Child has recently considered, in the D.D v Spain case of 12 February 2019, that the summary expulsions of unaccompanied minors, and in particular the lack of any procedure to identify the victim as unaccompanied minors, violated article 3 of the UN CRC on the best interest of the child, and article 20 of the UN CRC on the special protection required for unaccompanied minors. It emphasized that children “should be guaranteed a right to ‘access to the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights’”. In the present case, as in the D.D case, children have been removed before having the possibility to have an initial assessment of their situation by the authorities, especially an evaluation of protection needs and specific vulnerability, since they were apprehended and immediately sent to Turkey.

4. Perpetrator(s).

The migrants were met by a team of Hellenic Coast Guard (HCG) officers and put on a bus. They were told that they would be taken to a special camp for quarantine because of the Covid-19 pandemic. The bus drove for a couple of hours to the north of the island and stopped at a small port where men in balaclavas were waiting. The migrants allege that the Greek officers then took everyone's phone, beat them heavily and forced them on "a big coast guard boat with something like a cannon in the front side" that took them out to sea. There they were forced into life rafts and were left to drift towards Turkish territorial waters. The Hellenic Coast Guard violated their obligations under the Greek law to inform the migrants of their rights and refer them to competent authorities (article 4.5 of Presidential Decree 114/2010).

5. Action taken by national authorities:

On December 29th, 2020, GHM sent a communication¹ to the Ministry of Foreign Affairs, the Ministry of Public Protection, and the Ministry of Migration and Asylum, who despite requests made to them, refused to even inform about any steps taken following this communication / complaint. The Prosecutor at the Court of Cassation sent it on January 14, 2021 for it to take the actions deemed necessary to the Prosecutor of First Instance of Mytilene (Lesbos) who, until now, has not taken any action. The Ombudsman also sent the letter on January 15, 2021 to the Personal

¹ <https://racistcrimeswatch.wordpress.com/2020/12/29/2-273/>

Division of the Hellenic Coast Guard to investigate the case as a priority and return the results of the investigation to him for his review and evaluation.

The 14 migrants request to:

Return to Lesbos island to submit their asylum request or to be able to lodge it at the Greek diplomatic representation in Turkey

To be granted a humanitarian visa as provided by article 19A of the Greek Migration Code for victims of racial crimes as their deportation should be qualified.

Source: *Name and full address of the organization or individual(s) submitting the information.*

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