

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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on extreme poverty and human rights

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 33/9, 31/9, 26/19, and 26/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the lack of adequate emergency assistance to approximately 1,200 migrants living in Serbia, particularly vulnerable to the severe winter conditions registered in the country in December 2016, January and February 2017, and the lack of the provision of alternative adequate housing, aggravated by concerns over collective expulsion of approximately 600 migrants, in violation of your Excellency's Government's obligations under international law.**

According to the information received, more than 7,500 migrants are living in Serbia, most of them are sheltered in poorly equipped facilities, which lack proper sanitation and are inadequate to endure cold temperatures. The situation has reportedly been exacerbated by severe cold weather and snowfall nationwide since December 2016, exposing migrants to enhanced health and safety threats. There are reports that many of the government-run centres lack appropriate heating, and are operating in overcrowded conditions.

Housing conditions are particularly problematic for approximately 1,200 migrants living regularly or temporarily in unheated warehouses and abandoned buildings in Belgrade. The precarious circumstances leave them completely exposed to temperatures dropping below minus 15 degrees Celsius. Several incidents associated with the lack of appropriate housing conditions have been registered, including outbreaks of respiratory infections and frostbite. Such health and safety risks are aggravated when migrants attempt to survive very cold temperatures by building fires, with the consequent inhalation of poisonous fumes. Their dire

shelter situation is further worsened by the lack of appropriate clothing, as many of them do not have gloves, hats and shoes.

In this regard, heightened concerns have been expressed over restrictions imposed by your Excellency's Government to provision of humanitarian assistance to the population living outside official centres, discouraging the distribution of food, warm clothes and shoes. The intention behind such policy is reportedly to stimulate migrants to register and move to official centres, while discouraging others from going to Belgrade. It has further been reported that the relocation system is arbitrary, chaotic, frequently changing, not clearly leading to safety and security for person, and in some cases putting people at risk of arbitrary expulsion from the country.

It is alleged that official facilities continue to lack a sufficient number of spaces to accommodate all the persons in accordance with international standards notwithstanding the efforts deployed to rapidly develop the Obrenovac facility and to relocate circa 600 persons from Belgrade barracks to this facility. Moreover, it has been reported that conditions might be inadequate to provide human habitation in line with international law. The alleged additional arrivals in Serbia of approximately 10 persons per day, further exacerbates the situation.

According to the information received, there are around 3,000 migrant children in the country. Due to the cold weather conditions and inadequate shelter conditions, they are at risk of hypothermia as well as pneumonia and other potentially fatal respiratory illnesses. Amongst those children are around 1,600 unaccompanied migrant children, around 800 of whom live in abandoned warehouses in Belgrade. The lack of adequate shelter for migrants, especially children, and of facilities to meet their basic assistance and protection needs seem to be particularly acute in Belgrade, where unaccompanied children are living in abandoned warehouses. It is reported that they are fearful of registering at official centres because their needs for support, care and protection are poorly satisfied, and they reportedly face high risk of abuse, neglect, violence, and exploitation. Authorities are not providing such children with competent guardians to ensure that the best interests of the child are always guaranteed in all decisions taken regarding their rights and interests.

It has been reported, that Serbia has made efforts to enrol and include migrant children in mainstream education, which is important in promoting respect for their human rights, especially with a view to combating prejudices which lead to racial or other discrimination.

Finally, information received indicates that 4,791 migrants were expelled in 2016 to the former Yugoslav Republic of Macedonia and between August and December 2016, 108 have been expelled to Bulgaria. Amongst those, it is alleged

that some were brought to the border from the Presevo centre (one of the official centres, close to the frontier with the former Yugoslav Republic of Macedonia) in the South and expelled. In another instance, it has been alleged that migrants on public transport to the Presevo transit centre have been apprehended by the police and summarily expelled to the former Yugoslav Republic of Macedonia.

Since 30 November 2016 around 600 migrants have reportedly been summarily apprehended in villages close to the border and returned from Serbia to the former Yugoslav Republic of Macedonia and to Bulgaria by police or military, without having undergone an individual assessment. Allegedly, migrants were either returned directly at the border to the former Yugoslav Republic of Macedonia or Bulgaria, or driven back to the border by military and police forces.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the inadequate conditions of reception and accommodation of migrants, in particular children, in Belgrade and in other government-run shelters. We are especially concerned that the continuous arrival of migrants in Belgrade, the overcrowded situation in official centres, and the restrictions to the provision of humanitarian assistance, will continue to place current migrants and new arrivals at serious risk of succumbing to temperatures as low as minus 15 degrees Celsius over the coming weeks. While we commend your Excellency's Government's efforts to relocate several hundreds of migrants to barracks outside of Belgrade, we would also like to express concern over the apparent absence of a national response plan, despite further arrivals and warnings of bitterly cold weather, particularly in regards to providing dignified accommodation and reception conditions, including to thousands of unaccompanied and separated children counted in Serbia. While measures must be urgently implemented to provide access to warm and dry shelter to migrants subject to the protection of the Serbian government, we recommend putting in place long-term solutions to further increase shelter capacity to ensure that all migrants are housed in dignified, adequate living conditions.

This concern has been addressed by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Leilani Farha, in her mission report following the country visit to Serbia in May 2015 (A/HRC/31/54/Add.2). According to the Special Rapporteur, the dramatic housing situation of migrants in the country requires a response that takes into consideration "*multiple housing alternatives, from humanitarian shelter and temporary accommodation, close to services and without segregation, to longer-term housing for those who can travel no further*". Ms. Farha also stated that "[e]ven if the number of asylum applicants fluctuates regularly, it is crucial to plan ahead and to ensure at a minimum access to emergency shelters for all refugees, regardless of nationality."

We further wish to recall your Excellency's Government that article 11.1 of the International Covenant on Economic, Social and Cultural Rights states that "[t]he States

Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Article 12.1 of the Convention establishes that “States Parties [...] recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. It is under the responsibility of States Parties to ensure the full realization of such right in their territories, including under harsh weather conditions. It is also the obligation of States Parties to guarantee that such rights will be exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, pursuant to article 2.2 of the Convention. In this regard, general comment No.31 of the Human Rights Committee stated that “States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction”. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party. As indicated in general comment No. 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights 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.” In a similar vein, general comment No. 20 of the Committee on Economic, Social and Cultural Rights clarifies that “Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”

Concerning the rights of the child, we refer your Excellency’s Government to article 27 of the Convention on the Rights of the Child (CRC) establishing that “States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”, regardless of their legal status and documentation. In this connection, we would like to refer your Excellency’s Government to article 20 of the CRC which states that: “[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” Furthermore, we would like to refer your Excellency’s Government to article 22 that “[s]tates Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

As to the prohibition of collective expulsions, international law established that no one can be expelled from the territory of a State without a reasonable and objective

examination in accordance with the law and free from any arbitrariness of the full range of individual circumstances that may militate against the expulsion of each particular individual in the group. The International Covenant on Civil and Political Rights (ICCPR) does so in article 13, which, according to the Human Rights Committee, ‘would not be satisfied with laws or decisions providing for collective or mass expulsions’. In this regard, we recall to your Excellency’s Government article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, according to which no State Party shall expel, return (“refouler”) or extradite a person to another State, when there are substantial grounds for believing that he would be in danger of being subjected to torture. Furthermore, we would like to draw your Excellency’s Government’s attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33 of the 1951 Convention stipulates that no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. We would furthermore, like to draw your attention to article 14 of the ICCPR, which guarantees the right to a due process.

The full texts 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 on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide all information or additional comments in relation to these allegations.
2. Please provide information on the measures taken to guarantee the provision of adequate emergency assistance to migrants in Serbia, particularly vulnerable to the severe winter conditions, as well as the provisions of alternative adequate housing to migrants.
3. Please provide information on measures taken to address the living conditions provided for migrants, including quality of infrastructure, separation of adults and children, access to food, health care, and hygienic products, as well as access to legal aid and educational activities.

4. Please explain what measures have been taken to ensure protection and special aid for children and young persons temporarily or definitely deprived of their family's support?

5. Please share your strategy with respect to the provision of adequate housing to migrants, in accordance to international human rights obligations and standards, including provisions to further increase shelter capacity.

6. Please provide information on whether investigations have been carried in relation to the collective expulsion of migrants. Please provide information on training of the border forces, military and police on human rights protection and the treatment of vulnerable groups arriving in Serbia.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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.

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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