

HUMAN RIGHTS WATCH

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1 February 2001

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**RE: HUMAN RIGHTS WATCH COMMENTS ON GREEK
IMMIGRATION BILL**

Sent via fax

Dear Member of Parliament:

Human Rights Watch is writing in regard to the immigration bill currently under consideration by the Greek parliament. We recognize that the bill's intent is to improve upon past laws regarding the residence and employment of foreigners in Greece, and to meet the challenge of managing migration into the country. However, we are deeply concerned that provisions of the draft bill are in violation of Greece's international and regional human rights obligations. We are also concerned that the transitional provisions providing for a second regularization process for undocumented migrants may result in serious fundamental rights violations related to procedural guarantees and the detention of foreigners. Human Rights Watch includes in this letter a critique of key provisions of the draft bill and suggests amendments and changes to the draft that bring the bill into conformity with Greece's obligations under European and international law.

Prohibition against discrimination. In its current form, the draft immigration bill does not include an anti-discrimination provision. We understand that prior drafts of the bill included provisions prohibiting discrimination against migrants on grounds of race or religion, and guaranteeing migrants legally residing in Greece equal treatment with Greek nationals in access to vocational training and the right to freedom of association. These provisions were deleted from the current draft. We urge that a provision guaranteeing non-discrimination with respect to the rights enumerated in the draft law be included in the final bill in conformity with the well-established international norm prohibiting discrimination based on race, ethnic origin, religion, and other status. The inclusion of an anti-discrimination provision also complies with Greece's obligations as a member of the European Union under Council of the European Union Directive 2000/43/EC (Race Directive) implementing

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the principle of equal treatment between persons irrespective of racial or ethnic origin. The directive, now part of the *acquis communautaire* – the body of law governing membership in the European Union – requires all member states to conform their legislation to implement the directive's anti-discrimination principles within three years. The directive prohibits direct and indirect discrimination in both the public and private sectors based on race or ethnic origin and applies to access to employment; vocational training and working conditions; membership in trade unions; social advantages; social security and health care; education; and to the provision of goods and services available to the public, including housing. The directive specifically includes third country nationals within its scope, notwithstanding a government's right to differential treatment based strictly on legal status.

- **Article 1: Stateless Persons.** Article 1 of the draft bill defines those persons to whom the law applies, including those without a nationality (stateless persons). Human Rights Watch strongly recommends that Article 1(a) be amended to state that "An alien is every person who does not hold the Greek nationality or a person that does not have a nationality (stateless), in accordance with the 1954 Convention on the Status of Stateless Persons."

- **Article 5: Entry of Refugees/Asylum Seekers.** The draft bill requires that all persons seeking entry into Greece carry valid documentation, including a passport, other recognized travel document, and, where required, a visa. Article 5(5) provides for "exceptional cases" in which authorities at entry points may provide a visa upon authorization by the Minister of Public Order, but makes no specific reference to refugees and asylum seekers, many of whom are forced to leave their countries under urgent and extreme circumstances and are often unable to obtain travel documents prior to departure. For purposes of clarification, the article should state that persons with a well-founded fear of persecution if they are returned to their country of origin and those in need of international protection should be exempt from the requirement to provide such documentation. This exemption brings the draft bill into conformity with Article 31 of the 1951 Convention Relating to the Status of Refugees which prohibits the punishment of refugees for illegal entry into the country of asylum if the refugee travels directly from his or her country of origin and reports to the authorities in the country of destination without delay. The article should also contain specific reference to the fact that asylum seekers may lodge an application for asylum at any entry point (including in transit zones per Article 6 of the draft bill) as provided for in Presidential Decree 61/1991. Clarification regarding the rights of refugees and asylum seekers with respect to proper documentation and applying for asylum should also be incorporated at Article 7: Denial of Entry. Moreover, Human Rights Watch strongly recommends that Law 1975/1991 and Presidential Decree 61/1991 are reviewed and, if necessary, strengthened to comply in full with the 1951 Refugee Convention and relevant UNHCR guidelines.

- **Article 19: Granting of Labor Permits.** Human Rights Watch urges that work permits not be tied to a specific employer as required by the draft bill at Article 19(1). We have documented cases of serious abuse in labor sectors where such an exclusive relationship exists between employee and employer. For example, in November 2000, we interviewed numerous migrant women who worked as domestics in Greek households. Many women

held a work permit that allowed them to work only for one employer. Yet many of these women had experienced severe abuse (e.g. physical and verbal abuse; restrictions on freedom of movement; labor rights violations, including nonpayment of wages, long hours, and poor working conditions) at the hands of their employers. The women did not feel that they could leave their jobs because they were authorized only to work for one employer and feared they would not be able to acquire documents to work for another. In many cases, the abusive employer had confiscated their documents, leaving them vulnerable to deportation as undocumented migrants. We therefore recommend that work permits be keyed to particular labor sectors where there is a documented need for migrant labor (e.g. domestics) thus allowing migrants to change employers if their work conditions are abusive.

□□ **Article 28: Family Reunification.** Article 28(1) of the draft bill requires that aliens must reside legally in Greece for two years before applying to have family members join them. Article 12(1) of the European Convention on the Legal Status of Migrant Workers (1977) to which Greece is a signatory states that the waiting period required before family reunification may commence shall not exceed twelve months. The October 2000 European Commission proposal for a Council Directive on Family Reunification also adopts the twelve month waiting period. We urge that the draft immigration bill adopt one-year as the maximum residency requirement for migrants wishing to exercise their right to family reunification. With respect to Article 28(2) of the draft bill, we also urge that the categories of family members eligible for family reunification with a third country national legally resident in Greece be expanded to cover a broader range of persons in order to ensure that family integrity is authentically preserved. To this end, we recommend that the draft bill be amended to state that a migrant's family members for the purposes of reunification include her/his spouse or partner in a relationship producing the effect of marriage, and that family members in the ascending line who are dependent financially and emotionally on the migrant be eligible for reunification.

□□ **Chapter VIII Employment in Entertainment Centres: Nexus with Trafficking.** Chapter VIII of the bill, although couched in language related to artists and their employment in entertainment centres, includes within its scope the employment of migrant women in bars, nightclubs, and other venues. This chapter, however, makes no mention at all of the increasingly serious problem of trafficking of women and children into Greece for forced prostitution and other forms of forced labor. In our view, the entire chapter should be reconstructed taking into particular consideration the phenomenon of trafficking. Trafficking in women for forced prostitution in Greece has increased sharply in recent years, yet Greece has no laws specifically criminalizing trafficking in persons. Trafficking primarily affects migrant women. Traffickers often deceive women about the conditions of the work they will do once they arrive in Greece, and in some cases club owners threaten migrant women with forced deportation and violence if they do not cooperate. While some women trafficked into Greece know that they will work in the sex industry, they do not know and cannot know that they will be forced into debt bondage and servitude. Human Rights Watch's November 2000 research mission to Greece uncovered serious trafficking abuses. We also discovered, however, that the absence of laws on trafficking, coupled with a profound lack of coordination among

government law enforcement agencies, failed to provide trafficking victims with any consistent, effective protection from traffickers and their networks, which often include the very entertainment centers referred to in the draft bill. Human Rights Watch strongly recommends that Chapter VIII be rewritten to include explicit reference to anti-trafficking initiatives; provisions for the effective prosecution of migrant traffickers; and, in particular, special protective measures for trafficking victims, including witness protection for persons who agree to testify against traffickers, safe passage home to their country of origin if possible, the ability to apply for asylum, and the possibility of permission to stay in Greece for humanitarian reasons or victims of trafficking who have suffered the most severe forms of abuse at the hands of traffickers. The inclusion of such measures would indicate that Greece is in step with the December 2000 proposals by the European Commission to combat trafficking in human beings and the sexual exploitation of children; the November 2000 Organization for Security and Cooperation in Europe (OSCE) Ministerial Decision calling for enhanced efforts at the OSCE level to combat trafficking in human beings; and global efforts to address trafficking via the United Nations Convention Against Transnational Organised Crime and its Protocol on Trafficking in Human Beings.

- **Article 39: Granting a Residence Permit.** Article 39(4)(b) should make explicit reference to the provision in Greek law for temporary protection status for those in need of international protection. Relevant provisions of law 1975/1991 and Presidential Decree 61/1991 providing for temporary protection status will remain in force when the new immigration bill becomes law (see also general recommendation regarding review of refugee protection legislation in Greece under Article 5" above).

- **Article 41: Rights of Aliens.** Article 41 states that [a]liens legally residing in Greek territory enjoy fundamental human rights provided for by domestic law, international conventions, and general principles of law. Human Rights Watch strongly urges parliamentarians to recognize that most fundamental human rights, as articulated by the Universal Declaration on Human Rights (UDHR) and guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), apply to all persons despite their nationality or legal status within a particular country. Thus, in conformity with Greece's international and regional obligations, it is critical to add language to this article acknowledging that all migrants—those legally resident and those with an irregular status—enjoy fundamental human rights guarantees which the Greek state is required to protect. These rights include, but are not limited to, the right to life; freedom from torture, cruel, inhuman and degrading treatment; the prohibition against slavery and servitude; security of person; procedural guarantees; the prohibition against arbitrary detention; freedom of religion and expression; and the prohibition against discrimination. The free exercise of these rights and protection against basic human rights violations are essential for migrants in cases of police abuse, racist and xenophobic violence, and ill-treatment in detention. In cases where such abuses occur, any migrant—including undocumented migrants—should enjoy the full protection of the Greek state and have effective recourse in the criminal justice and judicial systems for abuses suffered. All too often, migrants attempting to bring claims before public authorities for human rights violations are detained as a matter

of first course and deported at the state's earliest convenience without any consideration at all of their claims of abuse.

- **Article 42: Access to Education.** This provision requires that migrant children seeking to enter public school must provide documentation equivalent to that required for attendance by Greek nationals. Exceptions are made for refugee children, children of asylum seekers, and those coming from areas where an irregular situation is prevalent. The requirement of valid documentation is an effective bar to school attendance for children of undocumented or irregular migrants. This provision is a direct violation of Greece's obligations under the 1989 U.N. Convention on the Rights of the Child which requires that states parties take measures to ensure that children are not discriminated against on the basis of the status of their parents (Article 2) and that states parties make primary education compulsory and available free to all (Article 28). Moreover, the exceptions noted above should be more precise and thus include child asylum seekers who are unaccompanied minors, children with special humanitarian status, and children under the temporary protection regime in accordance with Article 25(6) of Law 1975/1991.

- **Article 46: Administrative Expulsion.** There should be explicit reference in this provision to the situation of migrants who cannot be returned to their home countries due to on-going conflict, lack of diplomatic relations, and other obstacles to speedy return. This provision should include language to the effect that deportation orders for migrants who cannot be deported shall be suspended pending periodic review of conditions in the deportee's home country and the possibility of executing the deportation order in the future (see also section below at "Article 50" regarding alternatives to detention for migrants who cannot be deported).

- **Article 48: Prohibitions Against Expulsion.** This article should explicitly prohibit collective expulsions and state that each deportation order must be issued and reviewed individually in conformity with internationally recognized procedural guarantees.

- **Article 50: Aliens Detention Places.** This provision should include language indicating that detention conditions for aliens must comply with international and regional standards for the treatment of detainees, including the U.N. Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons Under Any Form of Detention, and the European Prison Rules. Human Rights Watch registers particular concern for those migrants held in detention who cannot return to their home countries due to conflict, lack of diplomatic relations, and other obstacles to speedy return. Their indefinite incarceration is a violation of the prohibition against arbitrary detention and it is incumbent on the Greek government to establish alternatives to arbitrary detention. The rights of aliens in detention should be posted in each detention facility in a variety of languages and should be explained to those detainees who cannot read. Moreover, it should be added that, in general, asylum seekers should not be detained. Asylum seekers should only be detained in exceptional circumstances, on a case-by-case basis, in accordance with the United Nations High Commissioner for

Refugees' Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. It should also be stated that detained asylum seekers in Greece enjoy the right to contact UNHCR.

- **Article 51: Unwanted Aliens.** The Ministry of Public Order maintains a list of unwanted aliens who are presumptively denied legal entry or residence in Greece. The criteria for inclusion on the list are not published and not known. There also appears to be no official review process whereby a person whose name is included on the list can seek information regarding the criteria or challenge the inclusion of his or her name based on mistake or any other reason. When Human Rights Watch met with the Minister of Public Order in November 2000, he stated that any person aggrieved by the inclusion of his name on the list could simply write him a letter and he would look into it. The process surrounding establishment and maintenance of the Greek national list should be formalized and transparent. Thus, criteria for inclusion on the list and an official review process should be included in the bill. Moreover, the list should not be used to obstruct a person's right to seek asylum in conformity with Article 14(1) of the Universal Declaration of Human Rights which endorses the right of any individual to seek and enjoy asylum from persecution. Refusing entry to asylum seekers could exclude them from the international protection they need and may amount to a violation of the fundamental principle of nonrefoulement—the duty of states not to return any person to a country where their life or freedom is at risk.

- **Article 53: Public Sector Sanctions.** Article 53(1) of the draft bill states that public sector employees are obliged not to afford their services to aliens unable to prove legal residence status in Greece and levels disciplinary and criminal penalties against those who do provide such services. Hospitals, clinics and treatment facilities are exempt from this prohibition in cases where aliens require emergency treatment. However, emergency treatment is not defined and leaves open the possibility that persons in need of routine health care (e.g. pregnant women and children with serious conditions that could hinder development) that provides a critical preventive function or the maintenance of a potentially life-threatening condition may be denied such care based on their irregular status. Furthermore, Article 6(2) of the 1989 U.N. Convention on the Rights of the Child (CRC) requires that states parties ensure to the maximum extent possible the survival and development of the child. Article 24 of the CRC guarantees children access to facilities for the treatment of illness and rehabilitation of health and mandates that governments strive to ensure that no child is deprived of his or her right of access to such health services. Article 53 of the draft law should thus contain language guaranteeing that any restrictions on access to health care or medical treatment must be in conformity with the most basic of human rights guarantees—the right to life. It should also explicitly exempt all children from any restrictions on their access to health care and medical treatment. In addition, the article prohibits legal persons of public law from affording migrants their services. It is unclear precisely what legal actors are included in this category. This provision should explicitly provide that migrants (whatever their status) have equal access to the criminal justice system and criminal and civil courts for recourse for crimes committed against them and the right to lodge civil claims for labor rights violations (e.g. nonpayment of wages for work completed). Such claims should be

heard in the courts or before administrative tribunals before an order of deportation is executed against an undocumented migrant.

- **Article 56: Private Sector Sanctions.** Although hospitals, clinics, and treatment facilities may provide emergency care to persons without valid documentation, Article 56(2) requires directors of hotels, resorts, clinics and treatment facilities, and any other personnel in any way providing shelter to an alien to inform the police if an alien is residing in their facilities. This reporting requirement could serve as a bar to persons in need of emergency shelter or specialized (i.e. life-saving) medical treatment and could result in threats to their safety and health. It also has serious implications for charitable, humanitarian and nongovernmental organizations that provide essential services (e.g. the provision of food and shelter) to the disadvantaged, including undocumented migrants. Private actors should not be enlisted by the state to act in a migration control capacity and this reporting requirement should be struck from the draft bill.
- **Article 57: Carriers Sanctions.** The United Nations High Commissioner for Refugees and many nongovernmental organizations, including Human Rights Watch, have expressed concern that the imposition of sanctions on carriers for bringing in passengers without valid passports and visas has the effect of engaging private companies in the exercise of immigration control functions. Private transport companies in fear of heavy penalties are put in a position where they not the state are making determinations about the validity of passengers' documents. Personnel of carrier companies thus serve as proxies for border and passport control personnel without any obligations to protect human rights, or the benefit of any training or expertise in migration control or human rights and refugee protection. The carriers' sanctions regime thus has serious implications for the right of refugees to international protection and the right to seek asylum. As noted above, many asylum seekers flee their countries under extreme circumstances which compel them to travel without valid documents. Article 31 of the 1951 Refugee Convention recognizes that asylum seekers often will not possess valid travel documentation and prohibits the punishment of refugees for illegal entry into the country of asylum if the refugee travels directly from his or her country of origin and reports to the authorities in the country of destination without delay. Carriers' sanctions thus can serve as an effective bar to the right to leave one's country and to seek refuge from persecution in another country. Thus, Human Rights Watch strongly urges that Article 57 be omitted from the final version of the immigration bill.
- **Chapter XV: Transitional Provisions.** Human Rights Watch acknowledges that the transitional provisions (i.e. regularization process) of the draft law will provide an opportunity for some undocumented migrants now illegally residing in Greece to gain legal status. However, these provisions contain many requirements—for example, proof of continuous residence for two years up to November 15, 2000—that most irregular migrants currently in Greece will not be able to provide. Minister of the Interior Vasso Papandreou has stated publicly that those migrants who cannot meet the requirements of the regularization process will simply have to leave. Human Rights Watch is concerned that the government's demand that migrants who cannot utilize the regularization process can simply depart Greece is not only unrealistic but may give rise to abuses in the

government's future migration control efforts. In its 2000 World Report, Human Rights Watch reported that the Greek police routinely conducted discriminatory sweeps of areas where immigrants live and gather, detained large groups of foreigners including those with valid residence permits and asylum seekers and detained them in police stations or sports facilities for long periods of time. Undocumented migrants were summarily expelled from Greece. In a personal meeting in November 2000, we expressed our concerns to the Minister of Public Order regarding the indiscriminate targeting of foreigners and the procedural violations that characterized these sweeps (which, according to local nongovernmental organizations, continue). The Minister's responses were unsatisfactory. He admitted that the sweeps took place in precisely the manner as reported by nongovernmental organizations and that hundreds of Albanian migrants were expelled in a July 1999 sweep. He failed to recognize the indiscriminate nature of the operations or the fact that collective expulsions violate individual procedural guarantees. Moreover, in December 2000, Human Rights Watch sent an urgent memorandum to the Greek government detailing the appalling conditions of detention for foreigners awaiting deportation in Greek police stations. Conditions of detention at the Alexandras Avenue detention facility for foreigners violated nearly every international and regional standard for the treatment of detainees. Human Rights Watch thus urges the Ministry of Public Order and the Ministry of the Interior to address the issue of irregular migration by strictly adhering to Greece's international and regional human rights obligations. In particular, we call for a halt to discriminatory police sweeps; the protection of procedural guarantees for those detained under the laws pertaining to aliens; the enhanced protection of asylum seekers and refugees; and adherence to basic minimum standards of treatment for foreign detainees, including the prohibition against arbitrary detention.

Human Rights Watch will be monitoring the immigration bill as it proceeds to passage. We would be happy to discuss our concerns with you at your convenience.

Sincerely,

Holly Cartner
Executive Director
Europe and Central Asia Division