

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva, GR 106 74 Athens, Greece, Tel: +30 210 7233221-2; Fax: +30 210 7233217;
Website: www.nchr.gr, E-mail: info@nchr.gr



**Dignified Treatment of all the Missing and Deceased Persons and their
Families as a Consequence of Migrant Journeys**

*The Greek National Commission for Human Rights adopts the Mytilini
Declaration*

7 February 2019

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, workers' and disabled persons' confederations, NGOs, political parties and ministries).

Dignified Treatment of all the Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys

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The Greek National Commission for Human Rights (GNCHR), within the context of its role as a National Human Rights Institution (NHRI), promotes the harmonization of national legislation and practices of the national authorities with international and regional standards regarding human rights and further encourages their ratification or accession to the aforementioned, while simultaneously supervising their effective application².

In fact, the GNCHR closely monitors all matters regarding the protection of migrants and refugees and has issued a series of Decisions and Recommendations towards the Greek State on matters concerning migrants' social rights, the entry and residence of third country nationals on Greek territory, detention conditions in detention centers as well as living conditions in reception centers, push-backs at the borders etc³.

On December 19th 2018 the UN General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration⁴, according to the provisions of the New York Declaration for Refugees and Migrants⁵. Greece supported the adoption of the Global Compact for Migration at

¹ The present document was adopted by the GNCHR plenary on 7.2.2019. Rapporteurs: Maria Gavouneli, First Vice-President of the GNCHR, Elli Varchalama, Second Vice-President of the GNCHR and Eva Tzavala, Legal Officer of the GNCHR.

² See article 3 par (b) and (c) of the UN Paris Principles (Adopted by Resolution 48/134 adopted by the UN General Assembly on December 20, 1993).

³ GNCHR Recommendations for the Protection of Social Rights of Refugees and Asylum Seekers in Greece, 20.09.2001, available at http://nchr.gr/images/English_Site/PROSFYGES/Koinonika_dikaiomata_%20prosfugon.pdf, GNCHR Proposal for the Ratification of International Conventions on migrant workers, 12.12.2002, available at http://nchr.gr/images/English_Site/PROSFYGES/Epikurosi%20symvashs%20gia%20metanastes%202002.pdf, GNCHR Observations on Law 3386/2005 titled "Entry and Residence of Third Country Nationals on Greek Territory", 10.10.2005, available at http://nchr.gr/images/English_Site/PROSFYGES/Metanasteutikos_nomos_2005.pdf, GNCHR Decision regarding the Right to Health of Undocumented Migrants, 08.11.2007, available at http://nchr.gr/images/English_Site/PROSFYGES/Right_health_Undocumented%202007.pdf. More recently: GNCHR statement regarding the serious dimensions that the refugee/migration problem has taken in Greece, 16.3.2016, available at http://nchr.gr/images/English_Site/PROSFYGES/GNCHR_Statement_Refugee_Crisis.pdf, GNCHR Report on living conditions in hotspots and accommodation sites for migrants and refugees, November 2016, available at http://nchr.gr/images/English_Site/PROSFYGES/GNCHR_Statement_Refugee_Crisis.pdf, GNCHR report on the condition of reception and asylum system in Greece, 22.12.2017, available at http://nchr.gr/images/English_Site/PROSFYGES/GNCHR_Report_Asylum_system_final.pdf, GNCHR Statement on the situation in the Reception Centers of the Eastern Aegean islands and, especially, of Moria in Lesbos, 15.10.2018, available at http://nchr.gr/images/English_Site/PROSFYGES/GNCHR%20Statement_Moria_2018.pdf, GNCHR statement on complaints regarding informal push-backs at the region of Evros, 29.11.2018, available at http://nchr.gr/images/English_Site/PROSFYGES/GNCHR_Statement_Informal%20push-backs_in_%20Evros_2018.pdf.

⁴ For the full text of the Global Compact for Migration visit https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf.

⁵ Resolution 71/1 of the UN General Assembly on September 19th 2016, http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.

the United Nations⁶. The Global Compact establishes a framework of inter-state cooperation by setting 23 Objectives, each of which correspond to specific commitments undertaken by States for the implementation of the aforementioned objectives, based on recommended actions and good practices. Amongst these, Objective 8 on *Saving lives and the establishment of coordinated international efforts on missing migrants* provides that states “commit to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants, in accordance with international law. They further commit to identify those who have died or gone missing and to facilitate communication with affected families”. In the meantime, on June 11th 2018, Greece joined a meeting in Rome with Cyprus, Italy and Malta in order to discuss the possibility of initiating of a Joint Process to account for missing migrants in the Mediterranean region. At the end of the meeting, the participating States signed a *Joint Statement on the issue of missing migrants*⁷, in which they firstly agreed upon the evaluation of existing investigatory capacities at a national level by the International Commission on Missing Persons (ICMP) and the submission of proposals, by the latter, aiming to redress possible shortcomings and enhance inter-state cooperation.

According to the official data of the International Organisation for Migration (IOM), in 2018 a total of 2.297 deaths of migrants were recorded (confirmed deaths or missing persons presumed as deceased), while during the first month of 2019 (between January 1st and February 5th 2019), 208 migrants have already lost their lives in their effort to cross the sea borders towards Europe. In addition, based on the official data provided by the UNHCR, the number of deceased or missing migrants in Greece between 2014 and 2018 reached a total of 1.878 persons⁸.

At an international level, there is no single document codifying the states’ obligations towards the deceased or missing migrants as well as the rights of their families. International customary or conventional rules address this matter in times of armed conflict. However, in peacetime, national law is mainly applied, complemented by provisions of human rights law, international criminal and humanitarian law and law of the sea apply, as the case may be. More specifically, the national legislation regulates the search, identification and registration procedures of dead and missing migrants, the participation of their relatives in such procedures as well as matters such as the dignified treatment of their bodies and their burial in marked graves. In practice, problems occur when adjusting national provisions to the specific case of migrants, who lost their lives or went missing in their attempt to enter the territory of the host state and about whom little is known regarding their personal data and the circumstances of their death or disappearance. The relevant practice of Greece and other Mediterranean countries reaffirms the aforementioned approach. Few references are made by EU Member States on applicable international standards, despite the fact that they are all contracting parties to the European Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Rights of the Child.

⁶ United Nations, Meetings Coverage and Press Releases, ‘World Leaders Adopt First Ever Global Compact on Migration, Outlining Framework to Protect Millions of Migrants, Support Countries Accommodating Them’, 10 December 2018, <https://www.un.org/press/en/2018/dev3375.doc.htm>.

⁷ For the text of the Joint Statement, visit <https://www.icmp.int/wp-content/uploads/2018/06/icmp-gr-mm-018-5-W-doc-joint-statement-on-the-issue-of-missing-migrants.pdf>.

⁸ United Nations High Commissioner for Refugees, Operational Portal, Refugee Situations, Greece, <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

In this framework, the GNCHR proceeds to the adoption of the *Mytilini Declaration* and calls upon the Greek state, when drafting migration policies or adopting legislation on third country nationals' rights and also upon local authorities, who are competent to exercise their powers on deceased and missing migrants, to take into account the rights and obligations that are thoroughly listed in this *Declaration* and are compatible with the international obligations of states, as these (obligations) have been stated in international instruments and have been interpreted by international and regional judicial bodies. This *Declaration*, signed on May 11th 2018 in Thermi (Mytilini) of Lesvos⁹ reads as follows:

**Declaration for the Dignified Treatment of all the Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys
(Mytilini Declaration)**

We the undersigned make this Declaration,
recognizing the inherent right to life and the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights
and that human beings have the right not to lose their identities after death,
call upon all States, to treat all persons equally, irrespective of their race, nationality, gender, gender identity or expression, sexual orientation/identity, religion, age, ability, capacity or status of any kind,
and in accordance with their international legal obligations and duties to:

A.

1. Provide safe passage for those seeking safety.
2. Desist from all actions that may lead to refoulement.
3. Strengthen protocols for search and rescue for all migrants including those who are missing.
4. Cooperate with and not obstruct or prosecute victims, families, family associations, and civil society in the legitimate exercise of humanitarian search, rescue and support of migrants.
5. Collect, examine and preserve all bodies.
6. Respect the bodies of the dead and guarantee chain of custody of the bodies from recovery to the final destination.
7. Take all reasonable steps to identify the deceased and to determine the cause and manner of death.
8. Undertake effective investigations to deliver justice, accountability and reparations.
9. Collect and preserve for all missing migrants ante mortem and background information and genetic information of the biological relatives; and collect and preserve for all unidentified remains all recovery and post mortem information, including post mortem DNA samples.
10. Preserve any personal effects of the dead, and restore them to the family.

⁹ The organization **Last Rights** had the initiative to call experts from all over the world to take part in a conference in Mytilini, the outcome of which was the adoption of the Mytilini Declaration. This Declaration was signed by the UN Special Rapporteur on extra-judicial, summary or arbitrary executions and other 50 organisations, universities, experts and individuals. For more information visit <http://lastrights.net/mytilini/4592828704>.

- 11.** Provide all necessary assistance to families of identified deceased migrants for the issuance of a death certificate.
- 12.** Develop accessible procedures for families requiring presumption of death and presumption of absence certificates.
- 13.** Make every effort to locate and notify the family of the dead and missing.
- 14.** Facilitate repatriation of the remains of the dead to their family if possible.
- 15.** Where the remains are not repatriated to the family, dispose of them in a manner that is dignified and respectful to the person.
- 16.** Record the location of burial of the unclaimed and unidentified remains and to respect and maintain gravesites in the countries where the bodies are found.
- 17.** Provide special protection for children of missing and dead migrants.
- 18.** Create national mechanisms in countries of origin, transit and/or destination related to missing migrants, which should include governments, civil society, families, associations of families, migrant communities and experts.

B. And to respect the rights of the missing and of the deceased and their bereaved families include but are not limited to the following:

- 1.** Family members of a missing or deceased person, or other relevant persons, including witnesses, wherever residing, should not be subjected to administrative detention and/or expulsion or proceedings for removal or expulsion, at any stage of investigation, administrative and legal proceedings.
- 2.** Family members shall have the right to choose the civil society organization(s) and legal representative(s) they wish to assist and support them and to advocate on their behalf at any stage, in all processes and proceedings concerning the search, identification, investigation and resolution of their rights in relation to their missing and their deceased relatives, including sanction and reparation where appropriate.
- 3.** Family members of a missing or deceased person have the right to be kept informed and be consulted at all stages of investigation, administrative and legal procedures, in the search for and recovery of, missing and deceased family members and their personal effects.
- 4.** Family members of a missing or deceased person should receive from State authorities, all necessary support and assistance to facilitate their right to appropriate and effective participation in the investigation and be provided with legal aid, access to documentation involving the search for recovery of missing and deceased family members and their personal effects whether on land or at sea.
- 5.** Family members of a missing or deceased person must at all times be enabled to give fully informed consent to all steps to be taken by authorities and those acting on their behalf.
- 6.** Family members of a deceased person should be able to decide upon the appropriate place, time and manner of funerary arrangements, whether temporary or permanent and the final destination for the laying to rest of their remains in a manner that is dignified and respectful to the person.
- 7.** Family members should be assisted to plan and participate in the funeral rites of their deceased relative, including where necessary, financial assistance and expedited immigration status and visa arrangements.

8. Family members should be enabled, on reasonable notice, to visit the place of rest of their deceased relative including, prior to a funeral, places of temporary rest such as those provided by undertakers, including to enable performance of rituals not only at the time, but thereafter to visit the place of final rest or memorial site. **9.** Family members should be enabled, where practicable, on reasonable notice, to visit the place where their relative is known or thought to have died or where they were last seen or known to have been, including to enable performance of rituals.

9. Family members should be enabled, where practicable, on reasonable notice, to visit the place where their relative is known or thought to have died or where they were last seen or known to have been, including to enable performance of rituals.

10. Support and assistance facilities should, subject to regular review, be made available until the missing person has been located or the deceased has been recovered, identified and laid to rest after due process of law including completion of any judicial investigation/inquest or related proceedings.

11. Special protection and support must be assured to children at all times, in accordance with the 1989 UN Convention on the Rights of the Child. **12.** The best interests of any child affected by the death or missing status of a parent or other close family member are of primary consideration in the provision of any of the above services, support to them individually, and to their family as a whole, including maintaining or restoring family unity for any child affected with surviving relatives, as soon as possible, in accordance with their best interests.

12. The best interests of any child affected by the death or missing status of a parent or other close family member are of primary consideration in the provision of any of the above services, support to them individually, and to their family as a whole, including maintaining or restoring family unity for any child affected with surviving relatives, as soon as possible, in accordance with their best interests.