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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 214 (53-24)
CYP 2/2011

29 August 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of a group of Iranian asylum seekers currently detained in Larnaca detention center in Cyprus:

1. **Mr. Mohammad Khosh Sorour**
2. **Mr. Mohsen Khosravani**
3. **Mr. Bagher Ebrahimzadeh**
4. **Mr. Mostafa Hajilou**
5. **Mr. Mohammad Malek Madar**
6. **Mr. Zakariah Ebrahim Moj**

According to the information received:

On 12 July 2011, the above named asylum seekers were reportedly attacked and assaulted by a group of police officers, following their protest in response to forcible removal and subsequent deportation without prior notification of one of their fellow inmates. It is reported that the detainees protested by shouting and banging on the doors and windows. Reportedly, the head of the detention center, accompanied by a large number of police agents, threatened the inmates with a use of firearms and instructed to stop the protest. In response to their continuous protest, a group of policemen and detention center personnel, all armed with batons and brass knuckles, proceeded with beating the detainees, verbally assaulting them and accusing them of involvement in organising the recent fatal explosion in Cyprus. Many were subjected to humiliating verbal assaults and racist statements, some of which are known to us. Reportedly, the personnel threatened detainees with death and transfer to a detention center with much worse conditions if they reported the incident to authorities. The above mentioned individuals sustained several injuries and sequels. Mr. Bagher Ebrahimzadeh, a 72-year-old asylum seeker, who had his complaint pending before the European Court of Human Rights against Cyprus, was severely beaten and humiliated for complaining against the Government of Cyprus.

It is further alleged that, Mr. Bagher Ebrahimzadeh who suffers from heart condition, was separated from the rest of the detainees after being severely beaten, and has since been held in solitary confinement. On 22 July 2011, ten days after the attack, only when the condition of Mr. Mostafa Hajilou, who sustained a broken leg, further deteriorated, was he admitted to the Larnaca "Old Hospital" where he underwent an x-ray and was prescribed medications which he reportedly did not have access to. It is alleged that none of the injured had ever received medical assistance.

On 14 July 2011, the officials of the detention center had reportedly interviewed asylum seekers separately and have instructed them not to talk to the media about the events. On 15 July 2011, an investigation was reportedly launched into the events.

It is alleged that the above mentioned individuals may have already been deported to the Islamic Republic of Iran while some 16 asylum seekers have been dispersed and their fate and whereabouts remain undisclosed.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above named asylum seekers is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the above named asylum seekers. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above named asylum seekers are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

With respect to the allegations according to which a group of policemen and detention center personnel, all armed with batons and brass knuckles, subjected detainees to beating, we would like to draw the attention of your Excellency's Government to principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "(1)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened." Furthermore, principle 16 provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in

self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention [...]” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

In this context, we would like to draw the attention of your Excellency’s Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

With respect to the allegation indicating that Mr. Bagher Ebrahimzadeh who suffers from heart condition, was separated from the rest of the detainees after being severely beaten, and has since been held in solitary confinement, we would also like to draw the attention of your Excellency’s Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the ICCPR (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your Excellency’s Government’s attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Additionally, we would like to draw the attention of your Excellency’s Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

Furthermore, we would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

In addition, in light of the allegations that some of the detainees who were in need of urgent medical treatment, were not provided any medical care, we would like to highlight to your Excellency's Government the obligations under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 24 specifically provides that "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

We would like to draw the attention of your Excellency's Government to article 3 of the Convention against Torture, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement."

We would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States "(n)ot to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]."

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 named asylum seekers in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please provide information concerning the legal ground to forcibly return the above mentioned asylum seekers to the Islamic Republic of Iran and how these measures are compatible with the international obligations of Cyprus as stated in the International Covenant on Civil and Political Rights and the Convention against Torture.

6. Please provide details on whether any risk assessment of the above mentioned person's return was carried out.

7. Please provide information on the measures taken to ensure the safety of the above named asylum seekers.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment