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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 Working Group on Arbitrary Detention and the Special Rapporteur on the human rights of migrants.

REFERENCE: UA G/SO 218/2 G/SO 214 (106-10)
CYP 1/2014

31 March 2014

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 the human rights of migrants pursuant to Human Rights Council resolutions 24/7 and 17/12.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention in Menoyia Police Detention Centre for more than 18 months of Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED].

According to information we have received:

Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] are asylum seekers from the Islamic Republic of Iran, whose asylum claims have been rejected by the authorities of the Republic of Cyprus. It is reported that Mr. [REDACTED] and Mr. [REDACTED] have been detained in Menoyia Police Detention Centre for 20 months, Mr. [REDACTED] for 21 months and Mr. [REDACTED] for 18 months, respectively.

It is reported that the detainees in Menoyia Police Detention Centre are forced to live in cramped conditions, with eight detainees sharing one room of 18 square metres. Furthermore, the detainees are only allowed outside the building for 2.5 hours each day and their cells are locked between 10:30 p.m. and 7:30 a.m.

On 3 March 2014, Mr. [REDACTED] reportedly started a hunger strike to protest against the arbitrary practice of long detention of rejected asylum seekers. Concerns have also been voiced that migrants and rejected asylum-seekers are routinely detained in prison-like conditions for extended periods while awaiting deportation, a practice that has been described as being motivated by deterring potential migrants and asylum-seekers. While detention as a means of

immigration control should only be used as a last resort, deportation orders and detention orders seem to be often issued by the authorities of the Republic of Cyprus at the same time, allegedly without considering alternatives.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] 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), ratified by Cyprus on 2 April 1969.

As stated in the Special Rapporteur on the human rights of migrants' report presented to the Human Rights Council in 2012, we firmly take the view that detention for immigration purposes should never be mandatory or automatic. According to international human rights standards, it should be a measure of last resort, only permissible for specific reasons, for the shortest period of time and when no less restrictive measure is available. Governments have an obligation to establish a presumption in favour of liberty in national law, first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure.¹

Furthermore, the United Nations Human Rights Committee has found that detention in the course of proceedings for the control of immigration is not per se arbitrary but that the detention must be justified as "reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time."² Detaining migrants and asylum seekers who have entered unlawfully onto a State party's territory for more than a "brief initial period" while their claims are being resolved is "arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security." The decision must "consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category".³ The Committee has for these reasons considered mandatory detention to be inherently arbitrary and therefore contrary to the International Covenant on Civil and Political Rights.

Allow us to recall that research on various alternatives to detention has found that over 90 per cent compliance or cooperation rates can be achieved when persons are placed in alternative to detention programmes. In addition, there is reportedly no empirical evidence that immigration detention deters irregular migration, or discourages people from seeking asylum. In fact, treating migrants and asylum-seekers with dignity and respect for their human rights throughout the asylum or immigration process contributes to constructive engagement in these processes. We would like to stress that

¹ A/HRC/20/24, paras. 68-69.

² See the references in CCPR/C/107/R.3, para 18.

³ Ibid.

alternatives to detention should not be used as alternative forms of detention and neither should alternatives to detention become alternatives to release. Alternative measures may also impact on the enjoyment of human rights and should therefore be in line with the principles of necessity, proportionality, legitimacy and other key human rights principles. Alternatives to detention include registration and/or deposit of documents, bond/bail, reporting conditions, community release and supervision, designated residence, electronic monitoring or home curfew.⁴

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 Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] 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 these cases 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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim(s)?
3. Please provide information concerning the legal grounds for the detention of Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. 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.
5. Please provide information on the measures taken to ensure the safety of Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED].

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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

⁴ See A/HRC/20/24.

alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

François Crépeau
Special Rapporteur on the human rights of migrants