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

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
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**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandate of the Special Rapporteur on the human rights of migrants.

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the human rights of migrants pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/12.

In this connection, I would like to bring to your Excellency's Government's attention information I have received on **the amendments to the 1954 Law on Infiltration** which was adopted by the Knesset on 9 January 2012 and which entered into force on 18 January 2012.

I acknowledge the challenges the country faces as a destination country for complex mixed migration flows and the need to develop specific measures to address those challenges including to regulate the entry of foreigners into its territory. I also understand the desire of your Excellency's Government to strengthen the regulations stipulated in the Law on Entry into Israel of 1952. Yet the information received indicates that the above mentioned amendments have introduced harsh and discriminatory punishment for irregular entry and treatment of persons entering the State of Israel without permission, contrary to international human rights standards which your Excellency's Government subscribed to.

According to the information received:

Reportedly, the law prescribes systematic detention prior to deportation for anyone defined as "infiltrators", namely one who is not a resident and entered Israel not by way of a border crossing determined by the Minister of Interior according to article 7 of the Entry into Israel Law. This law states that a person, whether a citizen or non-citizen, shall enter Israel by one of the border points set by the Minister of Interior through a decree published in the legal gazette and after he/she appeared at the border point and presented the border control officer with a passport or valid enter pass.

According to the amended Law on Infiltration, detention for “infiltrators” may be revoked prior to deportation only under exceptional circumstances, including bail, bank or other personal guarantee, if this release can expedite deportation due to age or health conditions; and humanitarian grounds. These grounds include the cases of unaccompanied minors. In addition detained “infiltrators” may be released upon provision of a guarantee if they have been detained for three months since they applied for entry/residence permit and authorities have not started treating their cases; if they have been detained for nine months since they applied for permit and there has been no decision; or if they have been detained for three years. These provisions clearly promote the use of detention for migrants who have committed no recognisably criminal offence in stark contradiction with international human rights standards which call for the principles of necessity, proportionality and last resort to guide its use.

It is furthermore of utmost concern that the law prescribes that detention of “infiltrators” will not be revoked if they are not cooperative (with deportation orders); if their release will jeopardize state security, public security or public health; or if the competent Defence authority presented an opinion whereby in their country of residence or area of living there are activities which may jeopardize the security of the State of Israel or its citizens. In all these cases detention may be prolonged to over 3 years unless age and health conditions will create health damages and release is the only means to avoid such damages. The ground for detention based on the migrants’ country of residence or area of living raises concern to me as this indicates that migrants are being penalized on grounds that could have no individual bearing, in the manner of a collective punishment which is inherently arbitrary.

The law provides that “infiltrators” will be brought before the Head of the Border Control who may authorize their release no later than seven working days from the beginning of their detention. This seven day detention period appears disproportionate taking into account its purposes, mostly to verify identity and grounds for entry and residence, and the absence of any criminal charges against the detainees during this period. The law also established a Tribunal for the review of infiltrators’ detention which is tasked to review the decision of the border control officers. The tribunal has to review the detention periodically and no less than every 60 days and may order the release of the “infiltrator” if convinced that one of the circumstances prescribed by the law have been fulfilled.

In this regard I would like to remind your Excellency’s Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel 3 October 1991, 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” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court

of the legality of the detention (art. 9 (4)) and that any person arrested or detained on a criminal charge has the right to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power (art. 9 (3)).

In addition the human rights legal framework governing detention is guided by the principles of necessity, reasonableness in all the circumstances, and proportionality. The starting point is that no one shall be subject to arbitrary or unlawful detention. Detention should accordingly be a measure of last resort and as the result of an individual determination, must only be applied in exceptional circumstances, be prescribed by law, meet human rights standards, be subject to periodic and judicial review and, where used, last only for the minimum time possible. The Working Group on Arbitrary Detention considers, for example, as arbitrary deprivation of liberty "when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without possibility of administrative or judicial review or remedy" (A/HRC/16/47, para. 8(d)). The Working Group has also noted, with respect to the detention of migrants in an irregular situation, that in cases where "the legal or practical obstacles for the removal of the detained migrants do not lie within their sphere of responsibility, the detainees should be released to avoid potentially indefinite detention from occurring, which would be arbitrary. The principle of proportionality requires that detention has a legitimate aim, which would not exist if there were no longer a real and tangible prospect of removal" (A/HRC/13/30, para. 91). According to the jurisprudence of the Human Rights Committee, detention should not continue beyond the period for which the State can provide appropriate justification (CCPR/C/59/D/560/1993, para 9.4).

I would also like to remind your Excellency's Government of its obligation of *non-refoulement* under the 1951 Refugee Convention, of which Israel was one of the twenty-six original drafting States and which it ratified on 6 July 1951, not to return a refugee to a country or territory "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (article 33). I would also like to recall that Israel, as a State party to the Convention against Torture since 1991, is under an obligation not to expel, return or extradite a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture" (article 3, paragraph 1)

Although, according to the amended Law, unaccompanied minors may be released prior to deportation, it is of particular concern that the law offers no guidance on the protection measures that should be put in place following the release of such unaccompanied children. More importantly the Law does not cater for those children who may be detained with one or more family members defined as "infiltrators" and subjected to the related treatment provided for by this Law.

In this regard, I wish to recall that the detention of a child shall be used only as a measure of last resort. The consequences of detention on their mental and physical development are incalculable. As stated by the Committee on the Rights of the Child, unaccompanied or separated children should not, as a general rule, be detained, and detention cannot be justified solely on their migratory or residence status, (General

Comment No. 6 on Treatment of Unaccompanied and Separated Children outside Their Country of Origin, CRC/GC/2005/6, para. 61). Allow me to remind your Excellency's Government of article 2(2) of the Convention on the Rights of the Child, ratified by Israel on 3 October 1991, which provides that all appropriate measures shall be taken "to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". I would also like to recall the principle of the best interests of the child enshrined in the Convention, which would be difficult to be upheld in detention.

I also wish to recall that Israel, as a State party to the International Convention on the Elimination of All forms of Racial Discrimination (ICERD) which it ratified on 3 January 1979, has undertaken to "engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation" (art. 2(1)). General Recommendation N. 30 of the Committee on Racial Discrimination further recommended that States should ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin" ... "non-citizens are not subjected to racial or ethnic profiling or stereotyping".

I wish to conclude by quoting the General Assembly 65/212 in which Member States "recognizes the cultural and economic contributions made by migrants to receiving societies and their communities of origin, as well as the need to identify appropriate means of maximizing development benefits and responding to the challenges which migration poses to countries of origin, transit and destination, especially in the light of the impact of the financial and economic crisis, and committing to ensuring dignified, humane treatment with applicable protections and to strengthening mechanisms for international cooperation."

As it is my responsibility, according to the mandates entrusted to me by the Human Rights Council, to clarify all information brought to my attention, I would greatly appreciate additional details from your Excellency's Government concerning the above legislation and its implementation plan. I would in particular appreciate to receive information on the following points:

1. What measures has your Excellency's Government taken or does it intend to take to ensure an individual assessment of those subjected to detention prior to deportation; those who may be in need of international refugee protection; those who may have been trafficked, or who are in need of human rights protection for other reasons;
2. As there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum, what alternatives to detention has your Excellency's Government considered for those individuals irregularly entering the

- country, bearing in mind that alternatives have been found to be significantly more cost-effective than traditional detention regimes;
3. What measures has your Excellency's Government taken to ensure that those detained under this law who are entitled to claim refugee protection are provided with access to the relevant administration procedures, legal representation and interpretation support which may enable them to do so;
 4. What is the relationship between the amended Law on Infiltrators and the Law on Entry into Israel and the implications of such relationship; and
 5. What is the status of the plan to add additional places to the Saharonim detention facility and to establish an additional facility with approximately 10,000 places for "infiltrators" and other categories of new arrivals into the country; please provide information on the conditions of detention in the Saharonim facility and those planned for the new facility.

I would greatly appreciate receiving the above information from your Excellency's Government within 60 days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

I remain at your disposal for any further clarification you may require and hope to be able to continue this constructive dialogue with you and your Excellency's Government. Please note that I can be contacted through the Office of the High Commissioner for Human Rights (Ms. Christel Mobeck at cmobeck@ohchr.org, and Ms. Federica Donati at fdonati@ohchr.org, tel: + 41 22 917 9995+ 41 22 917 9496; or any of them at: migrant@ohchr.org).

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

François Crépeau
Special Rapporteur on the human rights of migrants