



PUNISHMENT WITHOUT A CRIME

DETENTION OF MIGRANTS AND
ASYLUM-SEEKERS IN CYPRUS

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INTERNATIONAL**



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Cover photo: The Menogia detention facility near the southern city of Larnaca, Cyprus, expected to become operational in 2012.
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1. INTRODUCTION

“They said... they will detain me for another six months and then let me go again for another three months. They think this is OK but it is not.”

K, an Iranian migrant and mother of three children and whose asylum claim has been dismissed, speaking to Amnesty International in January 2012. Amnesty International first met K. in Nicosia Central Prison where she had been detained for five months

Every year, hundreds of people who flee to Cyprus to escape persecution, war or simply grinding poverty are put behind bars and detained as if they were criminals, even though they have committed no crime. Most are detained for months, often in poor conditions without access to adequate medical care and usually unable to challenge the lawfulness of their detention due to the paucity of free legal aid. In some cases, the Cypriot authorities refuse to free people even when the Supreme Court has ordered their release.

Some of those detained have made the difficult decision to flee their homes to find safety and are exercising their right to apply for asylum and be free from persecution. Pending a decision on their asylum application, they are in an extremely vulnerable position and should not be subject to immigration detention except in the most exceptional circumstances as prescribed by international and regional law and standards.

Irregular migrants¹ too should not be subject to immigration detention and should only be detained if the detaining authorities can demonstrate that other measures short of detention – including reporting requirements or a surety/guarantor system² – would not be sufficient, consistent with the right to liberty under international human rights law and standards. When the Cypriot authorities detain irregular migrants for immigration purposes without demonstrating that their detention is indeed necessary and that less restrictive measures are insufficient, they are also violating European Union (EU) law.

In the past, many Cypriots were migrants themselves and thousands rebuilt their lives abroad after becoming displaced during the war of 1974.³ More recently, their country has become a destination for migrants and refugees, particularly after Cyprus joined the EU in 2004, many of whom end up in tough and low-paid jobs, including as agricultural and construction labourers and domestic workers. Cyprus is also a destination for trafficking of women for sexual exploitation.

Amnesty International recognizes that the Cypriot authorities⁴ face tough challenges because of the division of the island. However, whatever the immigration legislation, policies and

practices the Cypriot government chooses to adopt, it must ensure that they comply strictly with Cyprus' international legal obligations under human rights and refugee law and standards, including by promoting and protecting the rights of refugees and migrants.

In particular, detaining people when they have committed no crime is a serious breach of their fundamental right to liberty. Detention of irregular migrants and asylum-seekers for immigration purposes is a severe measure that should be used only in exceptional circumstances, after careful consideration of the individual case and in full compliance with relevant international law and standards. The human rights impact of detention is felt not only by those detained, but also in many cases by their children, spouses and other relatives who rely on them.

Foreign nationals detained in Cyprus for immigration purposes include the following:

- Irregular migrants or asylum-seekers whose claims have been dismissed and who are held until their removal/deportation is arranged;
- Irregular migrants or asylum-seekers whose claims have been dismissed who are detained for longer periods because their removal cannot be enforced, for example, because they have no travel documents and there are difficulties associated in re-documenting them, including instances where the authorities of their country of origin refuse to co-operate with the re-documentation process; and
- Asylum-seekers who are detained pending determination of their claim.

Moreover, most of those detained languish in detention for long periods, some for over three years.

Cypriot law does not allow for asylum-seekers to be detained simply for entering the country irregularly, as long as they apply for asylum without "undue delay" after their arrival and explain the reasons for their "irregular" entry. However, the Refugee Law provides for detention ordered by a court on the grounds that:

- It is necessary to establish the identity or nationality of the person concerned;
- It is necessary pending the examination of new elements in the application for asylum filed by an applicant whose initial asylum claim was dismissed and whose deportation has been ordered.⁵

In practice, however, these provisions of the Refugee Law are rarely used and asylum-seekers are much more likely to be detained under the Aliens and Immigration Law provisions (see Chapter 2).

Irregular entry and/or stay in Cyprus remain criminal offences. In November 2011, Law 153(I)/2011 removed the punishment of imprisonment for the irregular entry into and staying in the Republic of Cyprus,⁶ but retained the criminal nature of these offences and their punishment with a fine (Chapter 3).⁷ However, because the vast majority of irregular migrants are indigent, Amnesty International is concerned that Law 153(I)/2011 will have a limited impact in reducing the number of those imprisoned in connection with irregular entry

and/or stay, as most irregular migrants will be unable to pay the fine and will therefore remain liable to imprisonment. Amnesty International believes that the mere fact of irregularly entering the Republic of Cyprus and the simple act of remaining in the country irregularly should not attract criminal sanctions and should be treated purely as administrative offence, if at all.

Law 153(I)/2011 was passed with the aim of transposing “Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures for returning illegally staying third-country nationals” (the EU Returns Directive).⁸ Amnesty international is concerned over the failure of Law 153(I)/2011 to adequately transpose the provisions of EU Returns Directive especially with regards to the required automatic judicial review of the decisions to prolong the detention beyond the six months (see chapter 4).

Among other things, Law 153(I)/2011 established that a “prohibited immigrant”⁹ whose deportation has been ordered can only be detained if other less coercive measures do not suffice and only when detention is necessary for the preparation of the removal and/or to carry out the removal itself. Those grounds are relevant, in particular, when the individual concerned presents a risk of absconding or is avoiding or obstructing removal. In addition, the above-mentioned amendments also set limits to the detention periods allowed, providing for a detention of up to six months which may be prolonged for another twelve months in cases where the individual refuses to cooperate or where the reception of the necessary documents by the third countries are delayed (see Chapter 3).

In practice, the authorities issue detention and deportation orders simultaneously without considering less restrictive alternatives to immigration detention, and the individuals concerned are then transferred to the county’s numerous facilities used for immigration detention purposes. There are at least nine such facilities – the police stations in Aradippou, Lakatamia, Larnaca, Limassol, Oroklini, and Paphos; Blocks 9 and 10 of Nicosia Central Prison; and detention facilities at Larnaca International Airport.

In all the facilities visited by Amnesty International delegates, asylum-seekers and irregular migrants are detained in conditions that fall short of international standards. For example, Block 10 of Nicosia Central Prison is a dark and unhealthy facility, with poor natural light, where detainees are forced to spend months in small and often overcrowded cells. In Lakatamia and Limassol police stations, detainees have no access to fresh air. In Limassol, immigration detainees have been held in the same wing as people charged with criminal offences.

Everyone – including people whose application for asylum has been dismissed and irregular migrants – has the right to liberty and security of person, including being free from arbitrary arrest and detention. All states should establish in law a presumption against detention solely for immigration control reasons.

This report describes how deficiencies in Cypriot law and practice result in the violation of the human rights of irregular migrants and asylum-seekers, and includes testimony and experiences of several people who have suffered as a result.

Among other things, Amnesty International is calling on the Cypriot authorities to:

- Repeal legislation imposing criminal sanctions for irregular entry or stay, which, should be dealt with, if at all, administratively;
- End the immigration detention of asylum-seekers;
- Ensure that other less restrictive alternatives to immigration detention are always considered first and given preference before resorting to detention;
- Ensure that Supreme Court orders to release immigration detainees when their detention is found to be unlawful are complied with promptly;
- Ensure that migrants and asylum-seekers are granted effective access to remedies to challenge detention and deportation orders, including through the assistance of free legal aid and adequate interpretation where necessary.

ABOUT THIS REPORT

This report is based on a research visit to the Republic of Cyprus by Amnesty International delegates between 28 November and 2 December 2011, as well as other research before and after that visit. The delegates went to Blocks 9 and 10 of Nicosia Central Prison, as well as Lakatamia and Limassol police stations, and interviewed over 100 detainees and staff at these places as well as people who have been detained there in the recent past. Amnesty International is grateful to the Cypriot authorities for facilitating these visits.

During the visit the delegates spoke to many people whose asylum claims had been dismissed. While any analysis of asylum determination procedures is beyond the scope of this report, Amnesty International has received persistent complaints over the asylum system, including, in particular, about the poor quality of asylum interviews. In this context, Amnesty International is also aware of the fact that in 2004 Cyprus was facing a backlog of more than 9,000 asylum applications. The organization was made aware that in early 2012 this backlog had been reduced to about 200 cases. The speed with which the Cypriot authorities appear to have dealt with the inordinate backlog, together with the numerous complaints from individuals whose claims were dismissed in the course of the clearance exercise, as well as the exceptionally low recognition rates¹⁰, give rise to concerns over the quality of the asylum system in Cyprus.

2. DETENTION OF ASYLUM-SEEKERS

“I was supposed to be in university this year but this [detention] has become my university.”

A visibly distressed young Iranian asylum-seeker, speaking to Amnesty International delegates in November 2011. He said he was supposed to be studying in the university back in Iran and was worried about his mother, who was detained in the next wing, as she had health problems and was suffering from stress because of the situation of her family

The Refugee Law prohibits the detention of all asylum-seeking children,¹¹ and provides that asylum-seekers who enter or have entered the Republic irregularly should not be detained solely for their irregular entry or stay provided that they present themselves without “undue delay” to the authorities and explain the reasons for their irregular entry.¹² The law does allow for a court to order the detention of adult asylum-seekers for up to eight days on two grounds:

- To establish the applicants’ nationality or identity if they have destroyed or falsified their personal documents and do not reveal their real identity during the submission of their asylum application; and
- To examine new elements in the application after the claim has been refused at the initial stage and at appeal level and a deportation order has been issued.¹³

A court may extend detention for further eight-day periods up to a maximum total period of 32 days.¹⁴

It appears, however, that in recent years the authorities have not resorted to detaining asylum-seekers under these provisions but instead under those of the Aliens and Immigration Law.¹⁵

Among asylum-seekers arrested and detained in Cyprus appear to be those who do not file an asylum application before being arrested for irregular entry or stay. The majority of such people appear to be routinely detained regardless of whether they were intending to apply for asylum – even if they have only been in the country for a few days.

If an asylum-seeker does present themselves to the authorities within a few days of arrival and applies for asylum, they are not arrested even if they entered the country irregularly.¹⁶ Indeed, most asylum-seekers who present themselves to the authorities and apply for asylum weeks or months after arrival are reportedly not arrested and are allowed to file an asylum application. However, some have reportedly been arrested for irregular entry and/or stay and – as with those arrested prior to filing an asylum application – have been given a prison sentence under the Aliens and Immigration Law before the introduction of the legislation

removing the penalty of imprisonment for irregular entry and stay.¹⁷ After they have served a prison sentence of between three and four months, they have then been issued with an administrative deportation and immigration detention order. The deportation aspect of the order is suspended pending examination of the asylum claim, but the asylum-seeker remains in detention pending the examination of their claim.¹⁸

Further, some asylum-seekers interviewed by Amnesty International had not been detained when they filed their asylum application, but were subsequently imprisoned for minor offences and then not released after serving their sentence. Instead, they were transferred to facilities used for immigration detention purposes under administrative detention and deportation orders. Such asylum-seekers have their deportation order suspended, but remain in administrative detention during the examination of their claim both at the initial stage and on appeal.¹⁹

Amnesty International has been made aware of asylum-seekers whose claims have been rejected at the initial stage and at appeal level, and who have subsequently been apprehended and remained in detention pending deportation even though they were awaiting a decision by the Supreme Court on their challenge against the rejection of their asylum application. This is because an application to the Supreme Court does not automatically suspend the deportation process. An application to suspend the deportation, as an interim measure must also be lodged with the Supreme Court. The suspension is not granted automatically but the applicant needs to establish 'blatant illegality' or 'irreparable damage'. This means that in Cyprus an asylum-seeker may be at risk of forcible return to a place where they are at serious risk of human rights violations (breaching the principle of *non-refoulement*) before their claim is finally determined unless the Supreme Court agrees to suspend the deportation order or in cases where the asylum-seeker has petitioned the European Court of Human Rights. In the latter case, the European Court indicates to the Cypriot authorities that "interim measures" (measures that prevent authorities from deporting someone to a country where they would not be safe) should be put in place.²⁰

I. is a 25-year-old Pakistani national who arrived in Cyprus in January 2009 to study economics at university. On 2 March 2010 he was arrested because his student visa had expired. He was taken to Block 10 of Nicosia Central Prison to await deportation. No alternatives to detention were examined. Two weeks after he was detained, on 16 March, he applied for asylum, saying that his life would be in danger in Pakistan because he had filmed an execution by the Taliban.

I. was only handed the detention and deportation orders eight months into his detention. His asylum claim was dismissed at first instance in May 2010 and after appeal in October 2010. On 16 November 2010 an attempt to deport him failed because I. refused to board the plane.

On 29 December 2010 his lawyer filed a case to challenge the dismissal of the asylum claim before the Supreme Court. However, the deportation was not suspended. On 14 January 2011 his lawyer submitted a habeas corpus application before the Supreme Court to challenge the legality of the length of I.'s detention, which by then totalled 10 months. On 20 January 2011 the Supreme Court found the length of his detention unlawful and ordered his immediate release. However, the next day, and despite the fact that the case challenging the decision to dismiss his asylum claim was still pending before the Supreme Court, I. was deported to Pakistan.

Indeed, Council of Europe guidelines provide that “the remedy against the removal decision shall have suspensive effect.”²¹ Furthermore, the European Court of Human Rights has emphasized that: “Only a system of proper review of an asylum request and/or deportation order with suspensive effect satisfies the needs of legal certainty and protection required in such matters”.²²

The Head of Asylum Service, Makis Polydorou, told Amnesty International that applications of detained asylum-seekers are prioritized. However, Amnesty International’s delegates found that many asylum-seekers languish in detention for several months while their claims are being considered, whether they are “prioritized” or not.

The Cyprus Commissioner for Administration has expressed concern over the detention of asylum-seekers while their applications are pending, saying: “... I would like to highlight the problematic nature of the practice of detaining individuals whose application is pending before the Asylum Service. Asylum-seekers are a particular category of migrants with distinct characteristics and for this reason I consider that each case must be treated on its own merits”.²³

S. is a 32-year-old Tamil asylum-seeker from Sri Lanka. Even though he had applied for asylum, he spent in total 16 months in Block 10 of Nicosia Central Prison pending deportation which could not be effected because his asylum application was still being considered.

He arrived in Cyprus in 2007 to study hotel management and was residing legally on the island. In July 2009, however, after he had heard no news of his family for months following the end of the decades-long conflict between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam, he became desperate for information so decided to go to Paris where there is a large Tamil community.²⁴ He had no visa for France so he used someone else’s passport to try to leave Cyprus, but was arrested and detained. While awaiting trial, he applied for asylum given his fears about what was happening to his community in Sri Lanka.

In court he admitted his mistake and was sentenced to three months in prison. After he served his sentence, he was immediately taken to a detention centre to await deportation, even though his asylum application was still being considered.

Thanks to a lawyer who assisted him without charging him, he managed to apply to the Supreme Court to be freed. On 18 January 2011, the Supreme Court ruled that the length of his detention was unlawful and ordered his release. However, immediately after the ruling, S. was rearrested and detained. He was finally released three months after the Supreme Court order but no document explaining his legal status was given to him or his lawyer. He told Amnesty International: “A police officer opened the door and told me, ‘go now, you are free’.” S. has now applied to the Supreme Court for the annulment of the decision rejecting his asylum application and remains free, awaiting the Court’s ruling.

In addition, case law of the Supreme Court allows for asylum-seekers to be detained in certain circumstances. In particular, the judgment in the case of Asad Mohammed Rahal holds that asylum-seekers are not detained solely for having applied for asylum and therefore their detention does not necessarily contravene the Refugee Law. The judgment holds that detention is lawful when asylum-seekers breach the provisions of the Aliens and Immigration Law (i.e. irregular entry or stay, or conviction of criminal charges). As such, certain asylum-seekers have been deemed “prohibited migrants” and thus are liable to detention pending

deportation.²⁵ In this respect, the ruling appears to be inconsistent with Article 31 of the 1951 Refugee Convention which, in the main, prohibits the detention of asylum-seekers solely based on their entry or presence in the host country without authorization.

The fact that asylum-seekers held in detention as a result of their irregular status are not usually deported until the determination of their claim at the initial stage and on appeal indicates that Cypriot authorities do regard them as asylum-seekers whose removal should not be effected until they are found not to be illegible for international protection. In the light of this Amnesty International considers their detention is unnecessary and thus unlawful.

Under international law, deprivation of liberty is only lawful if it is in accordance with a procedure prescribed by law. Any detention related to immigration control is permissible only on limited grounds, such as prevention of unauthorized entry into or effecting removal from the country.²⁶ Detention with a view to enforcing a removal/deportation order and its continuance is only lawful where there is a realistic prospect of removal/deportation within a reasonable time. In any event, even when the use of detention fulfils these requirements, international standards constrain the resort to detention for immigration control purposes by requiring its compliance with the principles of necessity and proportionality. This means, for example, that in each individual case detention will only be justified if less restrictive measures have been considered and found to be insufficient with respect to the legitimate objectives that the state seeks to pursue.²⁷

Asylum-seekers – who are presumed to be eligible for international protection unless and until proven otherwise following a full, fair and effective asylum determination procedure – should in particular not be detained, either administratively or under any immigration powers, because of their inherent vulnerability.²⁸

Human rights bodies have similarly emphasized that detention of asylum-seekers should only be a measure of last resort, after other non-custodial alternatives have proven or been deemed insufficient in relation to the individual. In the case of recognized refugees, detention for immigration purposes should be avoided in all circumstances.

3. DETENTION OF IRREGULAR MIGRANTS

“I made a mistake and I admit it, but I served my sentence. Why should somebody be punished twice?”

D., an Iranian national, speaking to Amnesty International in November 2011 after he had already spent five months in detention. He had been taken into immigration detention immediately after serving a prison sentence imposed for criminal offences

During its visit, Amnesty International found evidence that irregular migrants were being routinely detained pending deportation.²⁹ Testimonies collected from detainees, lawyers, the office of the Commissioner for Administration and NGOs appeared to confirm that the Cypriot authorities do not consider less restrictive measures before resorting to detention. Rather, detention orders are routinely issued alongside deportation orders. As a result, individuals are transferred to detention facilities without any prior examination of less restrictive measures.

According to the EU Returns Directive, “the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.”³⁰ Article 15 includes a number of procedural safeguards to reduce the risk of unlawful or arbitrary detention.

Amnesty International considers that there is no lawful justification for the routine detention of irregular migrants solely for immigration purposes. According to the Aliens and Immigration Law, people considered to be “prohibited immigrants” are not permitted to enter or remain in Cyprus. It defines as “prohibited immigrants”, among others, anyone who has been convicted of a criminal offence for which a prison sentence has been imposed (deemed an “undesirable migrant”) and anyone who enters and stays in the country contrary to the provisions of the Aliens and Immigration Law.³¹ The same law provides that a “prohibited immigrant” may be issued with a deportation order.

The same law previously provided that any “prohibited migrant” against whom deportation orders have been issued could be detained pending removal, and no maximum period of detention was specified in the relevant article.³² However, the Aliens and Immigration Law was amended in November 2011 by Law 153(I)/2011 with the intent to transpose the EU Returns Directive. The amendments provided specific requirements before resorting to detention and limits to the detention periods allowed, without however amending or

abolishing the existing provisions that allow for the detention of irregular migrants pending their deportation.³³ Lawyers told Amnesty International that the authorities continue today to issue orders under the older article of the Aliens and Immigration Law.³⁴

K. fled her native Iran in 2003, leaving behind one of her two children, and arrived in Cyprus the following year. On arrival, she immediately applied for asylum for herself and the daughter she had been able to travel with. The application was rejected at initial stage and on appeal. In 2008, she married N, a recognized refugee in Cyprus, and later that year the couple had a daughter. K. and N. were married in a mosque, but the authorities do not recognize their marriage.

In August 2011, while K. was at a local market, the police arrested her and placed her immediately in detention because her documents were not in order. No alternative to detention was considered. "No one seemed to care that a three-year-old girl was waiting for me back home," she said.

Amnesty International met her in November 2011 in Block 9 of Nicosia Central Prison, where she had spent five months in total. She said: "My child she thinks her mother abandoned her and has many psychological problems as a result of being separated from her mother. Nobody cares, nobody wants to help us."

K.'s older daughter is now 24 and has lived in Cyprus since she was 15. She speaks Greek and English but she is scared to leave the house fearing that she will be arrested and detained like her mother. "She wants to go to university," her mother said, "but instead she is imprisoned in her own house".

In January 2012, the authorities released K. provisionally and gave her three months to get her papers in order and re-marry N. in the town hall. However, town hall officials told her that she needed a valid passport. To obtain one, the Iranian embassy requires a birth certificate which she cannot get in time. She also claims that the authorities have her original birth certificate, handed to them when filed her asylum application, but so far refuse to return it despite her lawyer's efforts.

She said: "Last time I went to the immigration authorities they told me to not worry, they said that when my conditional release period is over, they will detain me for another six months and then let me go again for another three months. They think this is OK but it is not. What will happen to my kids?"

3.1 FAILURE TO EXAMINE LESS COERCIVE MEASURES

Amendments introduced by Law 153(I)/2011 seeking to transpose the EU Returns Directive set certain grounds that need to be met before resorting to detention.

Apart from some exemptions, the legislation provides for between a week and 30 days in which the individual may leave "voluntarily", during which enforcement action, including detention, is not envisaged.³⁵ If the person does not leave "voluntarily", the Director of the Civil Registry and Migration Department may take all necessary measures to enforce the order, including the use of coercive measures, albeit only as a last resort. These measures should be proportionate, and any coercion should be reasonable in the circumstances.³⁶

Law 153(I)/2011 provides that the Minister of Interior may issue a detention order unless, in a given case, other sufficient but less coercive measures can be applied effectively. Such an order may be issued to a third country national subject to removal procedures only to prepare the return and/or carry out the removal process of the individual, in particular when the

person presents a risk of absconding or is avoiding or obstructing the return or removal procedure".³⁷ The law, however, does not specify any alternative and less coercive measures.

Despite the legislation transposing the provisions of the Returns Directive providing for prior examination of less coercive measures before resorting to detention, the organization's research points to the fact that in practise these provisions are disregarded.

Amnesty International's delegates met several individuals who had been issued with detention and deportation orders. Some had served a prison sentence for irregular entry and/or stay and then been immediately redetained for immigration purposes and transferred directly from prison to a facility used for immigration detention purposes.

The majority of those detained during Amnesty International's visit were irregular migrants awaiting deportation. Many had initially been living legally in Cyprus but had then violated the terms of their visa, for example by overstaying, taking up work they were not allowed to do, or working more hours than their student visa permitted. Some of those detained awaiting removal had been convicted of criminal offences and been sentenced to short prison sentences of three to four months. In all these cases, their detention appeared routine, with no prior examination of any alternative less restrictive measures. Many had no prospect of being removed from Cyprus within a reasonable time. As a result, their detention appeared arbitrary and unnecessary – and therefore unlawful under both Cypriot and EU law.

Many testimonies confirmed that the authorities continue to detain individuals even though they cannot be deported because of a lack of travel documents. Some detainees told Amnesty International that they had been detained several times pending deportation, each time spending varying periods in detention, in some cases reaching a total of three or four years.

The Commissioner for Administration, in a letter to the Minister of Interior, expressed concern over the detention of individuals pending their removal before examining less coercive measures, especially in view of the country's obligations under the EU Returns Directive. She noted that it was "clear that the measure of detention should only be used as a last resort, after other less coercive measures have been examined and dismissed".³⁸

The resort to detention without prior examination of less coercive measures contravenes Cypriot law³⁹ as well as international standards, which provide that detention is only justified if less restrictive measures have been considered and found to be insufficient. The same standards are set out in the EU Returns Directive which also requires the release of an individual whose removal cannot be carried out within a reasonable time and for whom there are no other immigration detention grounds.

Further, as set out in paragraph 16 of the preamble to EU Returns Directive, "the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient." Article 15 of the Directive requires, among other things, that in order to be detained the individual must be subject to return procedures.

3.2 UNACCOMPANIED CHILDREN MIGRANTS AND FAMILIES WITH CHILDREN IN IRREGULAR STATUS

Amnesty International delegates did not come across any children detained for migration purposes during their visit. While urging the government to pursue its policy of refraining from detaining children for immigration purposes, the organization is concerned that the recent legislation, reflecting the provisions of the EU Returns Directive, fails to abolish the detention of unaccompanied migrant children. In particular, it allows for unaccompanied migrant children and migrant families with children to be detained as a last resort and for the shortest possible period. It also specifies that unaccompanied migrant children, to the extent possible, will be accommodated in institutions where personnel and facilities are appropriate to the needs of minors and that the best interests of the child will be the primary consideration⁴⁰.

In relation to the detention of families with children for immigration purposes, the Cypriot authorities recently reported to the United Nations (UN) Committee for the Rights of the Child that children could not stay with their parents in police detention facilities and for that reason a parent was released to allow for unification and childcare.⁴¹ However, NGOs and lawyers told Amnesty International of cases where both of the parents are detained pending their deportation and the children are placed under the care of welfare services. Amnesty International is further concerned over the stated intention of the Cypriot authorities to the UN Committee for the Rights of the Child that children will be able to be detained with their family in a special family block once the new detention facility in Menogia becomes operational.

Amnesty International believes that there should be a prohibition in law on detention of unaccompanied children solely for immigration purposes. Children, and in particular unaccompanied or separated children, should never be detained solely for immigration purposes given that immigration detention cannot be said to be in their best interests, ever. The detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified and represents an abject failure of the obligation to respect, care for, and protect children's human rights⁴².

In cases involving the detention of asylum-seeking children and other children solely for immigration purposes, the European Court of Human Rights has rightly emphasised the extreme vulnerability of such children, in particular but not exclusively unaccompanied or separated children⁴³. It should be noted that the Court not only found the detention of these children in violation of Article 5 of the ECHR (i.e. the right to liberty and security of person) but also that it amounted to a violation of Article 3 of the ECHR (i.e. freedom from torture and inhuman or degrading treatment).

3.3 PROLONGED AND REPEATED DETENTION

During their visit, Amnesty International delegates met a number of people who had been detained for several months, some for over a year. Many of those held for immigration reasons are caught in a vicious circle. While there is no reasonable prospect of enforcing their removal, they spent several months in detention after their initial arrest for irregular entry/or stay, then they were released and redetained a few months or years later for immigration reasons as they had no means of regularizing their status.

Delegates met individuals who had spent in total three or four years in detention as a result of such practices.

Moreover, during Amnesty International's visit, detainees and NGOs expressed concern about the stringent and arbitrary release procedures being applied at that time in relation to irregular migrants who could not be deported. Similarly, the Commissioner for Administration noted: "As a result, I note that the conditions imposed must in any case be clear and transparent and be explained in writing to the individual concerned in a way that they are understood by him/her. In any case, conditions imposed must be practicable and should not require actions that are not reasonably feasible".⁴⁴

Amnesty International's delegates saw the devastating effect that prolonged and unlawful detention had on mental and physical health. Detainees had difficulty with focusing and remembering key dates, and demonstrated signs of anxiety and stress, including scars caused by self-harming. The delegates were told that in the months before their visit, some such detainees had attempted suicide and one had died as a result.

When Amnesty International delegates met Z., an Iranian asylum-seeker whose claim had been dismissed, he had already been detained for three months and before that had been detained for three consecutive years. In April 2012, he remained in detention. The office of the Commissioner for Administration has repeatedly raised concern over the lawfulness of Z.'s detention given that his deportation had not been feasible for the past three years due to the lack of travel documents and the fact that, to date, there is no realistic prospect of deporting him.⁴⁵

Law 153(I)/2011 sets the maximum length of detention pending deportation at six months, with the possibility of extending it for a further 12 months in certain circumstances.⁴⁶ It also provides that detention shall be as short as possible and only maintained as long as removal arrangements are in progress and carried out with due diligence.⁴⁷ Prior to the amendments introduced by Law 153(I) 2011, no maximum period of such detention was specified.⁴⁸

These maximum lengths of detention are the same as those provided in the EU Returns Directive. Indeed, the Returns Directive also allows extensions up to 12 months in addition to the initial six-month period if the individual concerned is not co-operating with the removal process or if there are delays in obtaining necessary documentation from third countries.⁴⁹ If a reasonable prospect of removal no longer exists, then detention ceases to be justified and those detained must be released immediately. Amnesty International cautions that, albeit permissible under EU legislation, detaining someone solely for immigration purposes for up to 18 months is incompatible with the right to liberty as recognized in the European Convention on Human Rights and in other international human rights instruments by which Cyprus is bound.

X. is evidently anxious due to the fact that it is unknown to her when her mother will return home and why she is today detained. The absence of her mother appears to affect her everyday life, her activities and in general the functioning of the family, resulting in X. being overwhelmed by stress and agony for the future as well as melancholy , a phenomenon that can seriously disturb the personality of a child.

Specialist's assessment of the impact on a child whose mother had been detained for months in one of Cyprus' detention immigration facilities, in October 2011

In summary, Amnesty International believes that the implementation of law, policy and practice regarding the detention of irregular migrants pending deportation breaches relevant EU and international standards and is resulting in grave human rights violations.

Amnesty International believes that if detention occurs, it should always be for the shortest possible time and must not be prolonged or indefinite. Once the maximum period for detention has expired, the individual concerned should be automatically released.

4. SAFEGUARDS AGAINST DETENTION INADEQUATE AND IGNORED

“What kind of country separates a mother from her child?”

N., an asylum-seeker from Sri Lanka, speaking to Amnesty International in November 2011

A series of obstacles impedes people's ability to access justice and challenge effectively their detention for immigration purposes in Cyprus.

4.1 SAFEGUARDS AGAINST UNLAWFUL DETENTION

Law 153(I)/2011 states that the detention of a third-country national for the purposes of removal must be ordered in writing and accompanied by a reasoned justification of the material and legal grounds.⁵⁰ It also provides that the Minister of Interior informs immediately the person concerned about their right to file an application before the Supreme Court requesting the annulment of the detention order or a habeas corpus application challenging the lawfulness of the length of detention. However, the Minister is not obliged to inform the person of their right to a review of the detention order through an application to him/her. Legislation also fails to explicitly state that information about such remedies must be provided in writing in a language that the third country national understands.

N. is an asylum-seeker from Sri Lanka. She is married to another Sri Lankan asylum-seeker who lives in Cyprus and they have submitted a family asylum application. They have an eight-year-old daughter.

In September 2011, N. was arrested without documents and detained in Block 9 of Nicosia Central Prison. Michalis Paraskevas, her lawyer, told Amnesty International that despite his repeated requests, the authorities did not provide him with the deportation and detention order, so in April he challenged the lawfulness of her detention before the Supreme Court.

When Amnesty International met N. in December 2011, she was still in detention along with several other women held pending deportation. She tearfully said: “What kind of country separates a mother from her child? Yesterday it was her birthday. My daughter told me, ‘mama I miss you so much’.”

N. was eventually released on 23 April 2012, one day before the scheduled Supreme Court hearing and after seven months in detention.

Amnesty International has documented several cases attesting to a failure by the police authorities to explain to immigration detainees the reasons for their detention, its possible

length and the rights to which they are entitled whilst in immigration detention. Detainees and their lawyers told Amnesty International that often they are not provided with the reasons and justification of detention. Usually, detainees are given a short letter simply referring to the legislative provisions under which their detention has been ordered and to the fact that they are being detained pending deportation. In some cases, deportation and detention orders were handed to the individuals concerned several months into their detention.

Such shortcomings are particularly common in relation to detained asylum-seekers. A large number interviewed by Amnesty International, particularly those whose applications were pending, did not appear to know how long they would be detained, even when they were aware of its grounds.

While in immigration detention facilities, Amnesty International delegates did not come across any materials, such as leaflets in different languages, informing detainees of their rights and ways to challenge detention, nor was a list of lawyers readily available.

International human rights standards guarantee the right to be informed of the reasons for detention.⁵¹ The UN Working Group on Arbitrary Detention stated in Deliberation No. 5 that notification of the detention must be given by the authorities in writing, in a language understood by the asylum-seeker or migrant, stating the grounds for the measure and setting out the conditions under which those detained must be able to apply for a remedy to a judicial authority.⁵²

4.2 LIMITED ACCESS TO FREE LEGAL ASSISTANCE

Immigration detainees have very limited access to free legal aid. National legislation does not provide for free legal aid to challenge an administrative detention order or, until recently, to challenge a deportation order.

According to the authorities, the detainees, with the cooperation of the immigration office, have the right to apply for legal assistance and the appointment of a lawyer during the proceedings before the Courts regarding the deportation and detention decisions.⁵³

In February 2012, Legal Aid Law 165(I) of 2002 was amended and now provides for free legal aid to irregular migrants in order to contest any removal decision or entry ban. However, such free legal assistance is limited to proceedings at first instance before the Supreme Court under Article 146 of the Constitution⁵⁴ and is granted only if the appeal is deemed to have a reasonable chance of success.⁵⁵ Moreover, it is up to the applicant, who at that point is not entitled to free legal aid, to argue the likelihood of success. NGOs and lawyers told Amnesty International that the authorities do not inform detainees of this possibility.

Only a few lawyers provide free services to asylum-seekers and irregular migrants wishing to challenge their detention. KISA, a Cypriot NGO, had been providing free legal aid to migrants and asylum-seekers but at the time of Amnesty International's visit had ceased operations due to a lack of resources.

International human rights standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, guarantee the right of access to legal counsel and the right to legal assistance and interpretation for asylum-seekers and

irregular migrants who have been detained. Article 47 of the EU Charter of Fundamental Rights further stipulates that: “Everyone whose rights and freedoms guaranteed by the law of the Union... shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”. The EU Returns Directive provides that “the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation...”⁵⁶

Moreover, in a 2008 case against Turkey concerning two detained Iranian UNHCR-mandated refugees, the European Court of Human Rights found a violation of Article 5.2 of the European Convention on Human Rights (ECHR) on account of the applicants being denied legal assistance and not being informed of their grounds of their detention.⁵⁷ In a 2010 case against Greece concerning a detained asylum-seeker, the Court held that the existing remedy against his detention was purely theoretical on account of the lack of access to free legal assistance.⁵⁸ The Court found a violation of Article 5.4.

Navigating the legal system of administrative detention for immigration purposes in Cyprus is not a realistic expectation for the vast majority of detained irregular migrants and asylum-seekers, especially when there is such limited access to free legal assistance.

4.3 REMEDIES AGAINST DETENTION

Cypriot legislation provides two avenues to challenge before a court the lawfulness of a detention solely for immigration purposes. Firstly, Law 153(I)/2011 provides for a challenge under Article 146 of the Constitution before the Supreme Court⁵⁹. If successful, this results in the annulment of the detention order. The same law also allows for a habeas corpus application under Article 155.4 of the Constitution before the Supreme Court challenging the lawfulness of detention on length grounds.⁶⁰

According to lawyers, the average length of recourse under article 146 of the Constitution is one and a half years whereas in a habeas corpus application is one or two months. In the case of an appeal against an unsuccessful application, the length of the appeal proceedings in both cases is about 5 years in average.

In addition, according to domestic legislation, the Minister of Interior reviews immigration detention orders either on his/her own initiative every two months, or at a reasonable time following an application by the detainee.⁶¹ The Minister is also solely responsible for any decision to prolong detention for an additional maximum period of 12 months.

However, the lack of automatic judicial review of the decision to detain is a cause of major concern. Each decision to detain should be automatically and regularly reviewed as to its lawfulness, necessity and proportionality by a court or similar competent independent and impartial body, accompanied by the adequate provision of legal aid.

Article 5(4) of the ECHR provides that “everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”. Article 18(2) of the Asylum Procedures Directive states: “where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of a speedy judicial review”.

Article 15(2) of the EU Returns Directive stipulates that: “when detention has been ordered by administrative authorities, Member States shall: (a) either provide for a speedy judicial review of the lawfulness of detention to be decided as speedily as possible from the beginning of detention; (b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to speedy judicial review to be decided as speedily as possible... In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.” Article 15(3) states that: “In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In case of prolonged detention periods, reviews shall be subject to the supervision of a judicial body”.

In the light of these standards, and because of the lack of an automatic judicial review of the administrative orders to detain, especially in the cases of prolonged detention, it is clear that the procedural safeguards in Cypriot law fall short of international and regional standards including the EU Returns Directive.

O., a Sierra Leonean whose claim was dismissed, arrived in Cyprus in 2001 when he was around 30 years old. Amnesty International delegates met him in the dingy and cramped Block 10 of Nicosia Central Prison, where he showed them a folder marked “evidence”. He said: “I prepared it in case someone showed up.”

He explained that he had fled Sierra Leone as a result of events arising from the decade-long civil war in the country. In 2004 the Cypriot authorities closed his file, saying that they could not locate him to examine his application. He refutes that claim, saying that he was forced to change address and informed the authorities promptly.

A few months later, in February 2005, he was arrested. Over most of the next three years he was held in Block 10 during which four failed deportation attempts took place. In one of these attempts, in December 2005, immigration officers escorted him to Ghana but the authorities there refused to allow them to proceed to Sierra Leone due to lack of proper documentation.

Amnesty International had already met him in detention in 2007 and had written to the Cypriot authorities to raise concern about the lawfulness and length of his detention. He was eventually released for the first time in May 2008, after 39 months in continuous detention. He told Amnesty International that upon release he was left destitute and without any legal status. “The guard just opened the doors and told me ‘go now’. No papers, nothing. What was I supposed to do, where was I supposed to go?”

He was eventually forced to take up work to survive and as a result was arrested again in October 2010 for “illegal stay and employment” and again detained pending deportation. In August 2011, after he had been detained for around 10 months, he challenged the lawfulness of his detention on the grounds of its protracted length before the Supreme Court. He won and the court ordered his immediate release. However, before he left the court premises he was arrested and detained once again. The new arrest order was dated one day before the Supreme Court judgment was issued.

His faith in justice was shattered, he said. He added that when he arrived in Cyprus, “I was tricked by smugglers to believe I was safely in a EU country [Cyprus only joined the EU in 2004]. For months I thought I was in Greece. Now I have been tricked again, this time by the authorities. What is there left for me to do?”

He was finally deported to Sierra Leone in January 2012, having spent in total more than four years in detention in Cyprus.

4.4 EFFECTIVENESS OF REMEDIES CHALLENGING DETENTION

Amnesty International is particularly alarmed by cases in which successful challenges against immigration detention have been mounted by way of habeas corpus applications have not led to the release of the detainees concerned, as ordered by the Supreme Court, or release has happened only after considerable delay.⁶²

The Supreme Court found in these cases that the continuation of detention beyond six months was unlawful and ordered the individual's immediate release. However, the applicants were instead rearrested before leaving the Supreme Court building or immediately after on the basis of new detention orders issued on the same grounds.⁶³ In at least one such case, the new detention order predated the Supreme Court's decision by a day. Cypriot legislation provides for immediate release of any third-country national if their application under Article 154.4 of the Constitution is successful.⁶⁴

5. POOR DETENTION CONDITIONS

“The doctor who comes here says there is nothing he can do for me and sends me away.”

B., a Nigerian asylum-seeker whose claim has been refused, speaking to Amnesty International in detention in November 2011

Amnesty International’s delegates visited Blocks 9 and 10 of Nicosia Central Prison, and Lakatamia and Limassol police stations, all of which are used to detain asylum-seekers and migrants pending deportation. The organization is deeply concerned about the poor conditions witnessed and considers that they fall short of international standards.⁶⁵ Moreover, the facilities used to detain irregular migrants and asylum-seekers are not purpose-built facilities but police stations and two wings of the Nicosia Central Prison.

The Cypriot Authorities claim that over the past years new police detention facilities have been constructed, in accordance with international standards, and improvements were made to the existing facilities to meet those standards.⁶⁶ Moreover, during the organization’s visit, members of staff told Amnesty International that they provide the detainees with adequate medical care including the necessary medication and also facilitate the exercise of the religious needs of the detainees.

However, when visiting Block 10 of the Nicosia Central Prison, delegates came across poor conditions. Cells were often overcrowded, had inadequate access to natural light, were poorly ventilated and some had broken windows. The sanitary facilities were dirty and most toilets had no doors. Inmates said that they were allowed only for a very limited time to exercise outside.

I have serious problems back in Iran but I'd rather risk it and go back than stay in here any longer.

Iranian national whose asylum application had been rejected, referring to conditions in Block 10 of Nicosia Central Prison

The two police stations were set up to hold people only for short periods, but instead detainees were being kept there for months. Neither had open space for exercise or access to fresh air. In Limassol, people charged with criminal offences were being detained in the same wing.

None of the facilities visited had a resident doctor and Amnesty International’s delegates heard many complaints about a lack of adequate medical care. Detainees said that guards decided whether or not they needed to see a doctor or required hospital treatment. Inmates also complained about the poor quality of food. None of the facilities had a space for religious worship or recreation areas.

B. is a 36-year-old Nigerian who arrived in Cyprus in 2005 and applied for asylum. His application was rejected but he says that he was never interviewed. When Amnesty International met him in December 2011, he had been detained in Block 10 for over four months and had no idea what would happen to him. He had never seen a lawyer because he was unable to pay for one.

He told Amnesty International that his eyes were causing him problems and that his eyesight had seriously deteriorated in detention. "My eyes swell up and I can't sleep for days," he said. "The doctor who comes here says there is nothing he can do for me and sends me away. He only gives Panadol [a painkiller] to everyone anyway – we call him Panadol doctor."⁶⁷ B.'s documents show that he was taken to the hospital three times but he claims it was only twice. He was diagnosed with a chronic problem but was only given eye drops "that have no effect". He fears he will lose his sight.

"All the difficulties people experience here are 10 times worse for me because of my sight problems," he said. "It takes me 10 minutes to get to the toilet. It feels like torture."

During the visit, delegates also heard allegations of ill-treatment. Such allegations were also received prior to the visit. In particular, in July 2011, about 35 police officers reportedly beat, threatened and verbally abused a group of asylum-seekers detained in Larnaca police station. One of the asylum-seekers was said to have suffered leg injuries and to have been denied medical assistance for several days. Investigations into the incident by the office of the Commissioner for Administration and police complaints' authority were pending at the end of 2011.

In October 2011, asylum-seekers and irregular migrants were reported to have staged a hunger strike in Block 10 of Nicosia Central Prison and Larnaca police station to protest against the conditions and their prolonged detention.

A. comes from sub-Saharan Africa. When Amnesty International met him in Block 10 of Nicosia Central Prison he had already been detained for more than a month pending deportation. After his asylum claim was rejected in 2009, he was advised to pursue the case further but he said that he could not afford a lawyer.

A. has diabetes and said that since his detention he had lost a considerable amount of weight. "With the nutrition here it is impossible to follow a proper diet," he said. He also told Amnesty International that the visiting doctor had never checked his blood sugar level. He has his own monitoring machine, but needs special needles for it work. When they ran out, he asked for replacements, but the ones they brought him were not compatible with his machine. "When I asked for proper needles I was mocked by the guards," he said. "They told me to pay for them myself but I have no money."

During a meeting with Amnesty International on 30 November 2011, the then Minister for Interior acknowledged "shortcomings" in the conditions of detention. He said that a new immigration detention centre was about to open in the Menogeia region and that conditions there would meet international standards. At the time of writing in May 2012, however, the centre had yet to become operational. Amnesty International notes that even if the planned detention facilities meet international standards, immigration detention for removal purposes should only be resorted to in exceptional circumstances, and in compliance with the principles of necessity and proportionality.

Law 163(I)/2005 provides that all detainees have the right not to be subjected to torture and inhuman or degrading treatment or any other physical or psychological violence. It states that those responsible for a detention facility shall ensure adequate and appropriate nutrition, physical and mental health, hygiene, safety and physical integrity of the detainees.⁶⁸ International human rights standards such as Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the ECHR prohibit torture, cruel, inhuman or degrading treatment. Article 10 (1) of the ICCPR stipulates that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

Article 16(1) of the EU Returns Directive states that detention will as a rule be in specialized facilities and if this cannot be provided and third-country nationals are detained in prisons, they should be kept separately from ordinary prisoners. Article 16(3) of the Directive stipulates that: “particular attention shall be paid to the situation of vulnerable persons” and Article 14(1)(b) states that: “emergency health care and essential treatment of illness are provided”.

6. CONCLUSIONS AND RECOMMENDATIONS

The routine detention of irregular migrants and of a large number of asylum-seekers clearly violates Cyprus' human rights obligations. This pattern of abuse is partly due to inadequate legislation, but more often it is down to the practice of the authorities, particularly when it comes to their failure to examine real alternatives to immigration detention and their disregard of Supreme Court orders to release detainees. Urgent action is needed to rectify this situation that results in serious violations of the human rights of asylum-seekers and migrants. Speedy implementation of the recommendations outlined below would go some way towards ensuring the respect and protection of the rights of irregular migrants and asylum-seekers in Cyprus.

To the Cypriot authorities

On criminalization of irregular entry and stay

- Repeal legislation that criminalizes irregular entry or stay.

On detention of asylum-seekers

- End the detention of asylum-seekers for immigration purposes in law and in practice, in line with international human rights standards which require that such detention is only used in exceptional circumstances;
- Ensure that the recourse to the Supreme Court regarding a decision rejecting an asylum application at the initial stage or at appeal level automatically suspends the implementation of a deportation order.

On detention of irregular migrants

- Ensure that other less restrictive alternatives to detention are always considered first and given preference before resorting to detention. Alternatives to detention must be real alternatives to detention, as opposed to alternative forms of detention. In any event, their imposition must also strictly comply with the necessity and proportionality requirements;
- Detention should only be lawfully used when the authorities can demonstrate in each individual case that alternatives will not be effective and that it is necessary and proportionate to achieve a legitimate objective.

On detention of unaccompanied asylum-seeking and migrant children

- Prohibit in law the immigration detention of unaccompanied migrant and asylum-seeking children.

On the decision to detain and length of detention

- Ensure that the decision to detain is automatically reviewed by a judicial body periodically on the basis of clear legislative criteria;

- Ensure that migrants and asylum-seekers deprived of their liberty are promptly informed in a language they understand, in writing, of the reasons for their detention, of the available appeal mechanisms and of the regulations of the facility. The decision to detain must entail reasoned grounds with reference to law and fact;
- Immediately release immigration detainees for whom the sole basis of detention is their removal when this cannot be implemented within a reasonable time;
- Ensure that detention is always for the shortest possible time;
- Ensure that the maximum duration for detention provided in law is reasonable.

Procedural safeguards and access to information

- Ensure that migrants and asylum-seekers are granted effective access to remedies against administrative detention and deportation orders, including through the assistance of free legal aid to challenge detention and/or deportation and adequate interpretation where necessary;
- Ensure that deportation procedures contain adequate procedural safeguards, including the ability to challenge individually the decision to deport, access to competent interpretation services and legal counsel, and access to appeal before a judge;
- Ensure that migrants and asylum-seekers in detention are accurately informed about the status of their case and of their rights to contact a consular or embassy representative and or members of their families. Migrants and their lawyers should have full and complete access to the migrants' files;
- Ensure that consular authorities are only contacted if this is requested by the detained migrant; asylum-seekers should not be brought to the attention of their consular authorities without their knowledge and consent;
- Facilitate migrants' and asylum-seekers' exercise of their rights, including by providing them with lists of lawyers offering free services and telephone numbers of consulates and organizations providing assistance to detainees;

On effectiveness of remedies

- Ensure that Supreme Court orders to release detainees when their detention is found to be unlawful are complied with immediately.

On detention conditions

- Ensure that conditions for migrants and asylum-seekers held in immigration detention conform to international and regional human rights standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention and the UN Standard Minimum Rules for the Treatment of Prisoners;
- Ensure that irregular migrants and asylum-seekers held for immigration-related purposes are detained in purpose-built facilities that are not punitive in nature and are separated from criminal detainees;

- Ensure provision of proper medical examination as promptly as possible and of medical treatment, including psychological counselling where appropriate, whenever necessary and free of charge;
- Ensure that detained migrants and asylum-seekers have access to interpreters in their contacts with doctors or when requesting medical attention;
- Ensure that detainees have access to appropriate educational, cultural and informational Material;
- Ensure that a separate bed with clean bedding and personal hygiene products are provided for each detainee and that detainees have at least one hour of outdoor exercise daily;
- Conduct prompt, impartial and comprehensive investigations into all allegations of ill-treatment and torture of refugees, asylum-seekers and irregular migrants by law enforcement officials.

To EU institutions

- Amnesty International recommends that the European Commission fully and thoroughly investigate the extent to which Cyprus' laws and practices comply with the EU asylum and immigration *acquis* and in accordance with its powers initiates infringement proceedings before the Court of Justice of the European Union where necessary.
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ENDNOTES

¹ For the purposes of this report, the term irregular migrant is used to refer to a foreign national who lacks legal status in Cyprus – be it a transit or host country for the person concerned; one who entered Cyprus without authorization, or entered the country legally but then lost permission to remain in the country. Another term used is undocumented migrant.

² Reporting requirement is a periodic reporting to state officials, in person or by phone. A “surety” is the guarantee given by the third person that the individual will comply with the immigration procedures; to this end, the third person, the “guarantor”, agrees to pay a set amount of money if the individual absconds. See *Report of the Special Rapporteur on human rights of migrants*, A/HRC/20/24, 2 April 2012.

³ Following an invasion by Turkish troops in 1974, the island was divided into a territory controlled by the authorities of the internationally unrecognized Turkish Republic of Northern Cyprus and a territory controlled by the authorities of the Republic of Cyprus. These territories lie respectively north and south of the “Green Line”, a buffer zone controlled by the UN, which has been stationed on the island since the eruption of inter-ethnic hostilities in 1964.

⁴ For the purposes of this report, the term “Cypriot authorities” refers to the government of the Republic of Cyprus.

⁵ Refugee Law 6(I)/2000, Article 7(4)(a).

⁶ Until November 2011, these offences were punishable by imprisonment or a fine or both (Aliens and Immigration Law, Cap.105, Article 19).

⁷ Law 153(I)/2011 Article 18 OΓ (2).

⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures for Member States returning illegally staying third-country nationals.

⁹ Cypriot law defines a “prohibited immigrant” as anyone who has been given a prison sentence for a criminal offence or anyone who enters or stays in the country in breach of the Aliens and Immigration Law.

¹⁰ According to the National Asylum Authority, in 2010, only in 11 out of 2,371 asylum applications examined by the Asylum Service were granted refugee status; in 2011, it was only 28 out of 2,455. In 2010, subsidiary protection was granted in 214 cases; in 2011 in one case.

¹¹ Refugee Law 6(I)/2000, Article 7(4)(c).

¹² Refugee Law 6(I)/2000, Article 7(1).

¹³ Refugee Law 6(I)/2000, Article 7(4)(b).

¹⁴ Refugee Law 6(I)/2000, Article 7(6).

¹⁵ Interview with Corina Drousiotou, legal advisor with Future Worlds Center which is implementing a UNHCR programme providing legal aid to asylum-seekers; and interview with the office of the Commissioner for Administration, 15 April 2012.

¹⁶ According to the office of the Commissioner for Administration and NGOs working with asylum-seekers in Cyprus.

¹⁷ Law 153(I)/2011, Article 18 OF (2).

¹⁸ Interview with the office of the Commissioner for Administration office, 15 April 2012, and confirmed by the interview with Corina Drousiotou.

¹⁹ According to NGOs and lawyers interviewed by Amnesty International.

²⁰ "Interim measures", as spelled out by European Court of Human Rights under Rule 39 of the Rules of Court, require a state party to refrain from removing an applicant to a country where he or she may be at real risk of a violation of his or her fundamental rights. Amnesty International has raised concerns over the non-suspensive effect of that recourse in Cyprus. See *Amnesty International: State of the world's human rights 2011*.

²¹ Council of Europe Guidelines on human rights protection in the context of accelerated asylum procedures, Guideline X.

²² *M.S.S. v. Belgium and Greece*, Judgment of 21 January 2011 (Application no. 30696/09).

²³ Letter to the Minister of Interior, File no. A/Π 1786/2011, 2 December 2011.

²⁴ Hundreds of thousands of Tamil civilians were arbitrarily detained in military-run camps in Vavuniya district at the end of the war. See Amnesty International, "Unlock the Camps in Sri Lanka: Safety and dignity for the displaced now" (AI Index AS/37/016/2009).

²⁵ *Asad Mohammed Rahal v Republic of Cyprus*, Judgement of 30 December 2004 (Application no. 1023/2004).

²⁶ See, for example, the European Convention on Human Rights (ECHR), Article 5(1)(f).

²⁷ See relevant UN Human Rights Committee jurisprudence on Article 9 of the International Covenant on Civil and Political Rights (ICCPR); *A v. Australia*, Communication No. 560/1993; *C v. Australia*, Communication No. 900/1999. See also Council of Europe Guidelines on human rights protection in the context of accelerated asylum procedures, Guideline XI.

²⁸ The European Court of Human Rights has also emphasized the inherent vulnerability of asylum-seekers. See *M.S.S. v. Belgium and Greece*, Judgment of 21 January 2011 (Application no. 30696/09).

²⁹ Among those subject to immigration detention who Amnesty International met were people who had applied for asylum and whose claims had been finally dismissed and who were being detained as irregular migrants because the authorities claimed that they did not have any authority to be in the country.

³⁰ Preamble to the EU Returns Directive, para. 16.

³¹ Aliens and Immigration Law, Cap.105, Article 6(1).

³² Aliens and Immigration Law, Cap.105, Article 14(1).

³³ Law 153(I)/2011. The Returns Directive has had direct effect in Cyprus since 24 December 2010, as confirmed by the Supreme Court of Cyprus (e.g. Shanmukan Uthajenthiran (n. 152/2010), Irfam Ahmad (n. 5/2011)).

³⁴ Under Article 14(1) Cap 105 of the Aliens and Immigration Law and not under the provisions of Law 153(I)/ 2011.

³⁵ Law 153(I)/2011 Article 18ΟΘ.

³⁶ Law 153(I)/2011 Article 18Π(4).

³⁷ Law 153(I)/2011 Article 18 ΠΣΤ (1).

³⁸ Letter to the Minister of Interior, File no. Α/Π 1786/2011, 2 December 2011.

³⁹ Law 153(I)/2011 Article 18ΠΣΤ (1).

⁴⁰ Law 153(I)/2011, Article 18ΠΗ (1)(4).

⁴¹ Committee on the Rights of the Child reviews Report on Cyprus, 31 May 2012, at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/FF534DEBF70781B6C1257A0E005C19F8?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/FF534DEBF70781B6C1257A0E005C19F8?OpenDocument).

⁴² See also, International Detention Coalition, *RE: UN Pledging Conference 7 - 8 December on the occasion of the commemoration of the Geneva Refugee Convention*. Amnesty International strongly supports International Detention Coalition's global campaign to commit States to ending the detention of refugee and asylum-seeking children, as well as the detention of any child solely for immigration purposes.

⁴³ ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 October 2006, see, inter alia, paras. 55, 101-104 and ECtHR, *Mushkhadzhiyeva and others v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010, para. 63 (French only).

⁴⁴ Letter to the Minister of Interior, File no.Α/Π 1786/2011, 16 March 2012.

⁴⁵ Letter to the Minister of Interior, File no.Α/Π 1786/2011, 16 March 2012.

⁴⁶ Law 153(I)/2011, Article 18 ΠΣΤ (8).

⁴⁷ Law 153(I)/2011, Article 18 ΠΣΤ (1).

⁴⁸ Aliens and Immigration Law, Cap 105, Article 14(1).

⁴⁹ EU Returns Directive, Article 15 (6).

⁵⁰ Law 153(I)/2011, Article 18ΠΣΤ (2).

⁵¹ Article 9(2) of the ICCPR and Article 5(2) of the ECHR.

⁵² Principle No. 8 , UN Working Group on Arbitrary Detention, Deliberation No. 5, E/CN.4/2000/4, 28 December 2009, at <http://www.ohchr.org/EN/Issues/Detention/Pages/Issues.aspx>.

⁵³ Letter to Amnesty International by the Police Headquarters of Cyprus, 28 May 2012.

⁵⁴ Article 146 (1) provides that "The Supreme Constitutional Court shall have the exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person."

⁵⁵ Legal Aid Law 165(I) of 2002 as amended in 2012, Article 6Γ (2).

⁵⁶ Article 13(4) of the EU Returns Directive.

⁵⁷ *Abdolkhani and Karimnia v Turkey* Judgment of 22 September 2009, (Application 30471/08).

⁵⁸ *A.A. v. Greece*, Judgment of 27 July 2010, (Application 12186/2008).

⁵⁹ Law 153(I)/2011 Article 18 ΠΣΤ 3(α).

⁶⁰ Law 153(I)/2011 Article ΠΣΤ 18 (5)(α).

⁶¹ Law 153(I)/2011 Article 18ΠΣΤ (4).

⁶² Amongst others, *Mohammad Khosh Soruor* , Application No.132/2011; *Mostafa Haghilo*, Application No. 133/2011; *Osman Kane*, Application No. 95/2011;*Shanmukan Hanmukan Uthajenthiran*, Application No.152/2010.

⁶³ See also KISA “Cyprus continues illegal detentions in contempt of national and international court decisions”, 21 January 2011.

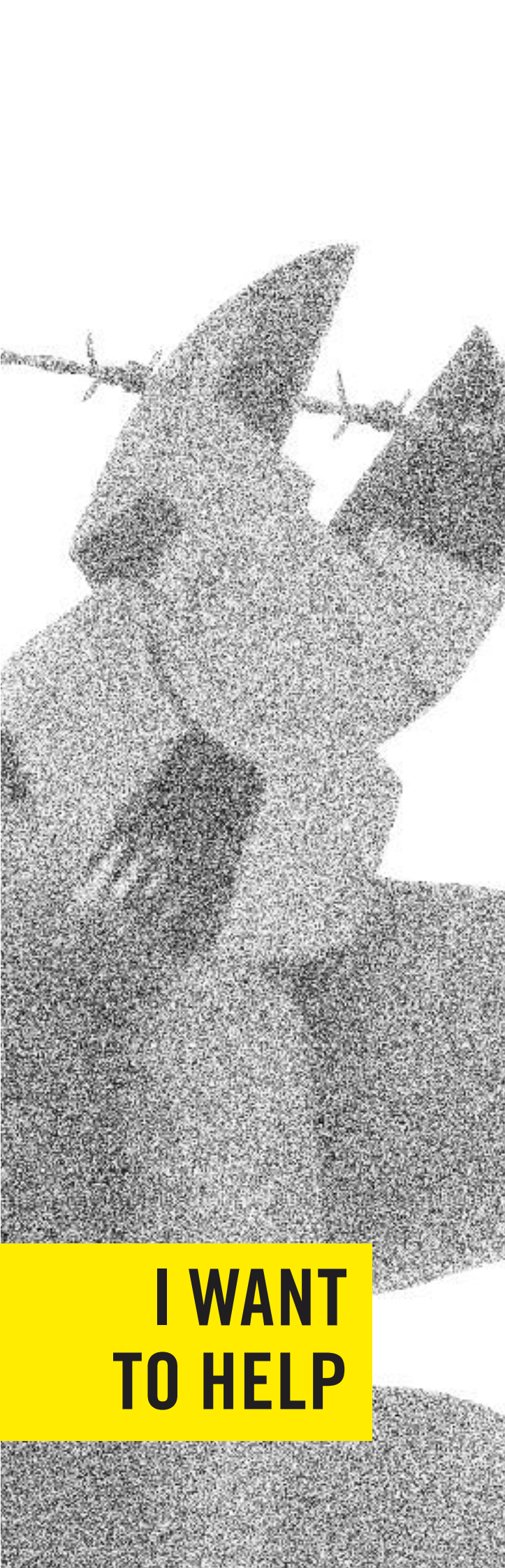
⁶⁴ Law 153(I)/2011, Article 18ΠΣΤ (5)(γ).

⁶⁵ See amongst others UN Body of Principles for the Protection of All Persons under Any Form of Detention at <http://www.un.org/documents/ga/res/43/a43r173.htm>; Standard Minimum Rules for the Treatment of Prisoners at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>; Guideline 10, UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999) at <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.

⁶⁶ Letter to Amnesty International by the Police Headquarters of Cyprus, 28 May 2012.

⁶⁷ Panadol is a tradename for paracetamol.

⁶⁸ Law 163(I)/2005 – the Rights of Persons under Arrest and Detention Law, Article 19(1)(2).



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PUNISHMENT WITHOUT A CRIME

DETENTION OF MIGRANTS AND ASYLUM-SEEKERS IN CYPRUS

Every year, hundreds of people, fleeing poverty or war and persecution, are deprived of their liberty for immigration purposes in Cyprus, most of them for months. Many languish in poor conditions, without access to adequate medical care. They have committed no crime.

Due to limited or no access to legal aid, many are unable to challenge the lawfulness of their detention. Even in cases where the Supreme Court rules the detention unlawful, many continue to be held.

When it detains irregular migrants as a matter of course, Cyprus is violating international human rights law, as this should only happen as a last resort. Under European Union law, detention may only be used after the authorities have demonstrated that it is both necessary and that less restrictive measures are insufficient.

This briefing documents the shortcomings in Cypriot law and its application, and calls on the authorities to take prompt action to fully respect the right to liberty of irregular migrants and asylum-seekers.

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