

PETITION TO:
UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chairman-Rapporteur: Ms. Leigh Toomey (Australia)

Vice-Chair: Ms. Elina Steinerte (Latvia)

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HUMAN RIGHTS COUNCIL

UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Akagou Junior Lankeu, Yasık Akhmad, Huegemann Leonie, Abdul Kareem Flayyih Ahmad
and Other 63 Detained Defendant in the Camps of Lithuania

v.

Government of the Republic of Lithuania

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31,
2006/102, 6/4, 15/18, 24/7, and 42/22¹

Submitted by

PRISONERS DEFENDERS ASIA DIRECTOR

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Counsel to “Stop-Detention-in-Lithuania”

¹ Resolutions 1991/42, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the UN Working Group on Arbitrary Detention. The Human Rights Council, which assumed... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights... pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, 6, (15 Mar. 2006), later extended the mandate through Resolutions 6/4, 15/18, 24/7, 42/22.

I . Identity

See Annex I, Attached

II. Arrest

- 1. Date of arrest: Various for each applicant-See Annex-I***
- 2. Place of arrest (as detailed as possible): Applicants are refugees who are detained at the camps located in the territory of Lithuania***
- 3. Did they show a warrant: No***
- 4. Authority who issued the warrant or decision: No judicial decision or official warrant was issued for their detention by Lithuanian Border Guardians***
- 5. Relevant legislation applied (if known):***

A final deportation order has been issued but has not been carried out, and there is a possibility of re-arrest and deportation at any moment

C. Detention

- 1. Date of detention: Various for each applicant-See Annex-1***
- 2. Duration of detention (if not known, probable duration): 8 months***
- 3. Forces holding the detainee under custody: Lithuanian Border Guardians***
- 4. Places of Detention (indicate any transfer and present place of detention): All victims are detained in Pabrade- Kybartai-Medininkai-Rukla Refugee camps***
- 5. Authorities that ordered the detention: Lithuanian Border Guardians***

1. Background information in Lithuania

In 2021, an unprecedented situation in the field of asylum and migration in Lithuania arose. The number of people crossing the Lithuania-Belarus border, the external border of the European Union (EU), increased more than thirty-fold compared to previous years. As of mid-August, 4,110 people had been detained at this border (2,882 persons were detained in July alone), compared to the 81 apprehended during the entire year of 2020. Among those detained are – primarily – citizens of Iraq (2,797 people), then of Congo (200), Cameroon (131), Syria (130), Afghanistan (83), and other countries.²

The seriousness of the situation was reflected not so much in the growth of numbers as in the nature of the movement of people itself, which was publicly encouraged by the Belarusian authorities in an attempt to use migrants, including asylum applicants, as a political tool against Lithuania in response to its support for the democratic opposition in Belarus.³

On 13 July, the Parliament of the Republic of Lithuania adopted Resolution No. XIV-505 entitled “On countering hybrid aggression”, which stated that “the states hostile towards Lithuania are waging hybrid aggression against the Republic of Lithuania, during which flows of third-country nationals illegally crossing the state border of the Republic of Lithuania are organised in violation of international law and international commitments with the purpose to destabilise the situation in Lithuania and cause damage to the State of Lithuania [...]” This resolution called upon the Government to undertake all possible measures. On 2 July, an “extraordinary situation.”⁴ was declared in the country due to a “mass influx” of foreign nationals.⁵

In this context, amendments to the Law on the Legal Status of Aliens (the “Aliens Law”) were also adopted, introducing important changes to the asylum system which are likely to have a significant impact on its overall functioning. During summer 2021, the Parliament of the

² <https://www.lrytas.lt/lietuvosdiena/aktualijos/2021/08/05/news/situacija-keiciasi-praejusia-para-sulaikyta-19-migrantu-apgreztadaugiau- nei-300-20328378/>

³ <https://lrv.lt/lt/naujienos/aptarta-skubi-ek-pagalba-stabdant-nelegalia-migracija-is-baltarusijos>

⁴ A state of emergency (“nepaprastoji padėtis”) as regulated by the Constitution and in line with Article 15 ECHR was not declared, rather, an “extraordinary situation” (“ekstremalioji padėtis”) was introduced.

⁵ Resolution No 517 of the Government of the Republic of Lithuania of 2 July 2021 On the Declaration of the Extraordinary situation and the Appointment of the State Commander of National Emergency Operations, TAR, 30/07/2021, No15235, available at: <https://bit.ly/3taBHCL>

Republic of Lithuania amended the Aliens Law twice. The first package of amendments was approved on 13 July 2021 with the adoption of Law No. XIV-506 “On the Law of the Republic of Lithuania Amending Articles 5, 71, 76, 77, 79, 113, 131, 136, 138, 139, 140 of the Law on the Legal Status of Aliens No IX-2206 and Supplement of the Law with Chapter IX” (“Amendments to the Aliens Law of 13 July 2021”)⁶

The law was amended for the second time on 10 August 2021 with the adoption of the Law No. XIV-515 “On the Law of the Republic of Lithuania on the Legal Status of Aliens No. IX-2206 Amendment to Article 67”⁷ (“Amendments to the Aliens Law of 10 August 2021”). Following the amendment of the law, secondary legislation to implement it was approved and/or amended accordingly.

2. Refugees and Migrants rights

Following a significant increase in the number of migrants arriving at the border from Belarus in August, Lithuania declared a state of emergency in November, which was extended until January 2022.

By the end of the year, Lithuanian border guards had reportedly forcibly returned over 8,000 migrants to Belarus since August. Migrants were held in poor conditions in camps. The prime minister announced plans to build a barrier separating Lithuania and Belarus. Construction began in November.

On 1 December, the European Commission published proposals allowing Lithuania to derogate from EU rules for six months. The measures allow Lithuania to extend the registration period for asylum application and simplify returns, thereby weakening asylum protections.

On 23 December, parliament voted to increase the six-month detention limit, introduced in July, to one year for migrants entering Lithuania from Belarus.⁸

⁶ TAR, 2021-07-22, Nr. 16266, available : <https://bit.ly/2Ylikvr>

⁷ TAR, 2021-08-11, Nr. 17359, available : <https://bit.ly/3yIvIWS>

⁸ <https://www.amnesty.org/en/location/europe-and-central-asia/lithuania/report-lithuania/>

3. Observation of United Nations High Commissioner for Refugee on Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506)

UNHCR had raised concerns about this provision and recommended to provide for requisite procedural guarantees, such as a written detention order, an assessment of proportionality and necessity of detention and judicial review with respect to asylum-seekers who stay at border crossing points, transit zones or the State Border Guard Service (i.e. the Foreigners Registration Centre) in the context of the border procedure.⁹

The adopted amendments introduce several changes to the existing border procedures, including i) the scope of its application, which now covers persons who have applied for asylum within the territory shortly after the irregular border crossing, ii) the locations where asylum-seekers can be accommodated in the event of a declaration of martial law, a state of emergency, or an emergency due to a mass influx of aliens, which includes temporary accommodation designated for that purpose, and iii) the time limits for detention of asylum-seekers. It is explicitly stipulated that while staying at the places of temporary accommodation.¹⁰

The asylum-seekers concerned, shall not enjoy freedom of movement within the territory of Lithuania. Moreover, the maximum 28-day period of the mandatory stay at these locations is extended for the duration of the martial law, state of emergency, or emergency due to a mass influx of aliens, with a maximum limit of 6 months and *without administrative or judicial review during* this period.

Where detention is applied for a legitimate purpose, it needs to be provided for by law, based on an individual decision, be strictly necessary and proportional, timebound and regularly reviewed. Detention should never apply to children and alternatives to detention, are generally preferable and possible in border procedures.¹¹ In the current amended law, the authorities are *not required to issue formal detention orders* based on individual circumstances, assess the

⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Draft Law Amending the Law of the Republic of Lithuania on the Legal Status of Aliens (Reg. No. XIII-P- 5109), September 2020, available at: <https://www.refworld.org/docid/605e06a84.html>.

¹⁰ This could include BCPs, transit zones, border guard units or newly established temporary accommodation sites

¹¹ UNHCR, Practical considerations for fair and fast border procedures and solidarity in the European Union, 15 October 2020, page 2, <https://www.refworld.org/docid/5f8838974.html>. UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>

necessity and proportionality of detention or ensure access to a judicial remedy and no exemptions are foreseen for vulnerable persons.

According to newly introduced Article 113 (4) (1) of the Aliens Law, an asylum-seeker may be detained “when he/she entered the territory of the Republic of Lithuania illegally by crossing the state border of the Republic of Lithuania during a state of war, a state of emergency, a state of emergency declared due to a mass influx of aliens, or an emergency”. The proposed provision allows to detain asylum-seekers who have arrived irregularly, for a period of up to 6 months (with the possible extension to 12 more months) and based on a mere fact of irregular entry in the period of a declared emergency situation.

However, Article 31(1) of the 1951 Geneva Convention prohibits the imposition of penalties (including but not restricted to detention) on refugees who have come directly from territories where their life or freedom is threatened, present themselves without delay to authorities and show good cause for their unauthorized entry or presence.¹²

Refugees who have not “come directly” from their countries of origin may accordingly be liable to penalties. The term “directly” is to be interpreted broadly and not in a literal temporal or geographical sense, meaning that refugees who have crossed through, stopped over or stayed in other countries *en route* may still be exempt from penalties. There is no defined time limit for a delay, stopover or stay, and the reasons for doing so will be relevant to determining whether penalties may be applied¹³

The adopted amendments introduce an administrative appeal stage against decisions of the Migration Department. The appeal should be lodged within 7 days from the date of the asylum-seeker’s acquaintance with the decision and the Migration Department is required to examine the appeal and take a decision within 7 days from the receipt of the appeal

The second instance appeal before the Court shall not suspend the enforcement of the initial decision of the Migration Department. While the asylum-seekers concerned will still be entitled to lodge an appeal with the Vilnius Regional Administrative Court and request an interim

¹² Article 31 of the 1951 Convention Relating to the Status of Refugees, July 2017, PPLA/2017/01, pp. 7-8, www.refworld.org/docid/59ad55c24.html(Costello et al). G S Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection, June 2003, www.refworld.org/docid/470a33b10.html

¹³ UN High Commissioner for Refugees (UNHCR), Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers, September 2019, <https://www.refworld.org/docid/5d8a255d4.html>

measure on ad hoc basis, no automatic suspensive effect is envisaged even for cases of asylum-seekers whose applications were examined under the regular procedure.

The lack of automatic suspensive effect of the appeal, notably after an expedited administrative review, and considering the existing challenges related to provision of information, counselling, legal representation and interpretation, may undermine access to an effective remedy and lead to a violation of the principle of nonrefoulement contrary to Article 33 of the 1951 Geneva Convention.

The CJEU established in its jurisprudence that an asylum appeal must always ensure an automatic suspensive effect. To illustrate, the Court clarified in case C-181/16 (*Sadikou Gnandi v Belgium*)¹⁴ that *“the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy enabling automatic suspensory effect, before at least one judicial body.*

4. The situation of refugees in the camps of Lithuania amounts to a detention

The victims are held in refugee camps in a isolated situation by not granting them to integrate the society and by not granting them right to free movement inside the country. In order to determine whether the situation of the refugees could be defined as detention, it is necessary to take a look at prominent case law of Court of Justice of European Union(CJEU). The nature of the measure means that, although the term “accommodation” is used, it in fact falls within the definition of detention (when a Member State holds an applicant in isolation in a place where the applicant is deprived of his freedom of movement) and in practice provides for the automatic detention of asylum applicants in the event of an “extraordinary situation” such as that currently invoked. The indications of detention are that the provision in itself explicitly deprives the persons concerned of freedom of movement and that they are isolated from the rest of the population, by requiring them to remain permanently within a restricted and closed perimeter (see the CJEU ruling of 14 May 2020 in the case C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, § 223).

¹⁴ *Sadikou Gnandi v Belgium*, para 58, available at: CURIA - List of results (europa.eu).

While the isolation of people amounts to detention in itself, there is also no individual assessment of detention and accordingly the requirements of necessity and proportionality are not applied, nor is there an assessment of alternatives to detention.

5. Poor and inhumane conditions of the Camps in Lithuania

Refugees who crossed the border to seek asylum and to have a better life found themselves in inhumane and unsafe conditions, without enough to eat or to feed their children, without clothes to keep warm, or the basic sanitary conditions that we all expect, and unable to contact loved ones or family members in their home countries.¹⁵ Women lacked basic sanitary products, baby formula, diapers, even bin bags to keep the place clean. There was also a dangerous lack of food provision, without enough meals to go around, some people only received a few slices of bread.

III. DEPRIVATION OF LIBERTY UNDER CATEGORY-I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under Category I when some of the following violations are present: (1) when the government has held an individual incommunicado for a period of time; (2) when the government has arrested an individual without a warrant and without judicial authorization for such deprivation of liberty; and (3) when vague laws are used to prosecute individuals.¹⁶

As it was explained above, in the current amended law, the authorities are *not required to issue formal detention orders* based on individual circumstances, assess the necessity and proportionality of detention or ensure access to a judicial remedy and no exemptions are foreseen for vulnerable persons.

¹⁵ See available: <https://bnn-news.com/conditions-in-lithuanian-migrant-camps-seen-as-dangerously-scarce-minister-calls-for-patience-227768>

¹⁶ See, e.g., Bettar v. Morocco, Working Grp. on Arbitrary Detention, Commc'n No. 3/2013, paras. 30-314 (April 30, 2013); 61 Individuals v. United Arab Emirates, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, para. 22 (November 22, 2013).

As could be seen, the refugees under current law of Alien, is arrested and detained without arrest warrant. It is crucial to remember that , many individuals who are arrested without warrant continue to be detained without charge for even greater periods of time – sometimes for decades. Lengthier and more complex cases often come before the WGAD where a person is not only arrested without warrant but also then detained without charge. Many, in fact, remain detained without charge while their petitions are considered by the WGAD. One such example is the case of a Chinese restaurant manager arrested without warrant in the Maldives, who was then detained for a further fifteen years with neither the production of an arrest warrant nor concrete charges against him.¹⁷

Cases where no warrant is ever issued and no charges ever brought are routinely found arbitrary, because this amounts to not only a failure to promptly inform a person of the reasons for their arrest and any charges against them¹⁸ but also constitutes a wholesale denial of the right to challenge one's detention.¹⁹

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law²⁰ This right is reiterated by Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles.²¹ The HRC has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.²² Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as identifying the officials who are authorized to make arrest.²³

The arrest of the Applicants did not comply with international law. the Applicants were not shown an arrest warrant at the time of his detention. Such failure to follow the legal arrest procedures violated the Applicant's right to freedom from arbitrary arrest under Article 9(1) of the ICCPR, Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles.

¹⁷ 4 Richard Wu Mei De v. Maldives, WGAD Opinion No. 04/2009, Adopted May 6, 2009, at } 30.

¹⁸ ICCPR, at Art. 9 (2).

¹⁹ ICCPR, at Art. 9 (3) and (4)

²⁰ ICCPR, supra note 53, art. 9(1).

²¹ UDHR, supra note 53, principles 2 and 36(2).

²² UN Human Rights Committee, General Comment No. 35, ¶ 23, UN Doc. CCPR/C/GC/35, (16 Dec. 2014) (hereinafter, “General Comment No. 35”).

²³ Id

An early opinion from the WGAD regarding a case in the Philippines demonstrated that an arrest without a warrant, regardless of a later charge, is usually found arbitrary. Among three detainees arrested without warrants, two later had charges brought against them, while the third had still not been charged by the time the WGAD considered the petition. The WGAD found that all three detainees were subjected to arbitrary detentions in violation of Articles 9(1)

and 14 of the ICCPR.²⁴ regardless of the fact that charges were, at some point, introduced for two of the detainees.

IV. DEPRIVATION OF LIBERTY UNDER CATEGORY-III

Arrest and detention of victims are arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”²⁵ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”)²⁶

Article 2 Inconjunction with Article 14(1) ICCPR: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

²⁴ Dioscoro Pendor, et al. v. The Philippines, WGAD Opinion No. 27/1993, Adopted Apr. 30, 1993, at } 10.

²⁵ Methods, *supra* note 72, at para. 8(c).

²⁶ *Id.* at paras. 7(a), (b).

Article 14 is of a particularly complex nature, combining various guarantees with different scopes of application. The first sentence of paragraph 1 sets out a general guarantee of equality before courts and tribunals that applies regardless of the nature of proceedings before such bodies.

The second sentence of the same paragraph entitles individuals to a fair and public hearing by a competent, independent and impartial tribunal established by law, if they face any criminal charges or if their rights and obligations are determined in a suit at law.

In such proceedings the media and the public may be excluded from the hearing only in the cases specified in the third sentence of paragraph 1. Paragraphs 2 – 5 of the article contain procedural guarantees available to persons charged with a criminal offence. Paragraph 6 secures a substantive right to compensation in cases of miscarriage of justice in criminal cases.

Paragraph 7 prohibits double jeopardy and thus guarantees a substantive freedom, namely the right to remain free from being tried or punished again for an offence for which an individual has already been finally convicted or acquitted. States parties to the Covenant, in their reports, should clearly distinguish between these different aspects of the right to a fair trial.²⁷

The amendments introduce a new pre-trial complaint procedure (amendment of Article 136 of the Aliens Law and new Articles 1351 and 1352), which provides that an appeal against a decision not to process an asylum application or to refuse asylum may be lodged with the Migration Department within 7 days of the date of notification of the decision to the foreigner. Second, such an appeal does not suspend the enforcement of the decision. However, the Migration Department, which also makes a decision at first instance, cannot be considered an independent and impartial body for the examination of appeals against its own decisions. Second, such an appeal does not suspend the enforcement of the decision. And thus their right to effective remedy was also violated. Therefore, the rights of refugees under Article 14(1) ICCPR was violated.

Article 14(5) ICCPR: Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

Refugees, during mandatory stay following their detention for 28 days and by extension up to 6 months is unable to challenge their detention by taking their cases to higher courts. In other

²⁷ UN Human Rights Committee, General Comment No:32

words, their detention is not subject to judicial review for this period without any justification and that is violation of Article 14(5) International Covenant on Civil and Political Rights

6. Lithuania violated victims's Right to Freedom from Torture and Cruel, Inhumane or Degrading Treatment

Article 7 of the ICCPR guarantees that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10(1) of the ICCPR further provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The right to freedom from torture and cruel, inhuman or degrading treatment or punishment is reiterated by Articles 1, 4 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which Vietnam is party, Article 5 of the UDHR, Principle 1 and 6 of the Body of Principles, and Rules 1 and 43 of the Mandela Rules. The Vietnamese Constitution also prohibits “torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity.”

The victims-as was seen in the video attachment- were insulted, physically tortured, faced degrading treatment by law enforcement officers and police officers during the process of being held incommunicado. By torturing victims, Lithuania has violated Articles 7, 10(1), and 14(3)(g) of the ICCPR, Article 5 of the UDHR, Articles 1, 4 and 16 of the CAT, Principles 1, 6 and 21(2) of the Body of Principles, Rules 1 and 43 of the Mandela Rules

7. Lithuania violated their right to free movement

Article 12(1) ICCPR: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant, as is often shown in the

Committee's practice in considering reports from States parties and communications from individuals. Moreover, the Committee in its general comment No. 15 ("The position of aliens under the Covenant", 1986) referred to the special link between articles 12 and 13²⁸

The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.²⁹ The Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12³⁰

Once a person is lawfully within a State, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals, have to be justified under the rules provided for by article 12, paragraph 3³¹

Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory³²

In the current case, refugees in different camps of Lithuania is not allowed to move freely in the territory of Lithuania. They are not even allowed to travel around the camps in which they stay. When they attempted to travel around the camps, they were caught by the police officers in the forest and they are taken to the camps back. In *Lloyd Tarumbwa, Fanny Tembo and Terry Musona v. Zimbabwe*, the WGAD only found Category I and III violations in regards to several individuals subjected to a forced protective police custody that interfered with their right to freedom of movement.

8. No one of permissions mentioned in Article 12(3) apply to the restriction of free movement of refugees

Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorizes the State to restrict these rights only to protect national security, public order (ordre public), public health or morals and the

²⁸ HRI/GEN/1/Rev.3, 15 August 1997, p. 20 (para. 8)

²⁹ UN Human Rights Committee, General Comment No: 27, Para 2

³⁰ Communication No. 456/1991, Celepli v. Sweden, paragraph 9.2

³¹ General comment No. 15, paragraph 8, in HRI/GEN/1/Rev.3, 15 August 1997, p. 20

³² UN Human Rights Committee, General Comment No: 27, para 7

rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant (see paragraph 18 below).

Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.

In the current case, the government of Lithuania failed to establish why the restriction on their right to free movement was and still is necessary and proportional. There is no any justifications mentioned in Article 12(3) International Covenant on Civil and Political Rights.

9. Lithuania Violated victims's to be Visited by Family and to Communicate with the Outside World

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact,” Rule 58 stating that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals,” and Rule 106 stating that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.”

Victims were forced to live and they are currently living in a Camps that are isolated from the rest of the population from the society in Lithuania. They are unable to communicate with their family that they left to seek asylum in Lithuania. They are also unaware about all developments happening outside the word. Their communication with outside World was cut by high walls and other measures taken by administrative of camps.

Hence, Lithuania violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

V. CONCLUSION

As could be seen and examined above, the arrest and detention of the victims/applicants are arbitrary because they were deprived of their liberty on the grounds that they crossed the borders illegally. However, lack of an official arrest warrant issued by competent authorities, lack of judicial remedies, independency of courts and administrative bodies, allegations of torture and other violations showed that their deprivation of liberty is arbitrary under category-I and III.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Prisoners Defenders Asia is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts. Prisoners Defenders Asia, has been retained by Stop-Detention-in-Lithuania as their international counsel.

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