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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Note verbale dated 26 April 2018 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to convey a copy of the letter of Kudret Özersay, Deputy Prime Minister and Minister of Foreign Affairs of the Turkish Republic of Northern Cyprus, which reflects the Turkish Cypriot views on the advance edited version of the report of the Office of the High Commissioner on the question of human rights in Cyprus (A/HRC/37/22) submitted to the Human Rights Council at its thirty-seventh session (see annex).

The Permanent Mission of the Republic of Turkey would appreciate it if the present note and the attachment thereto* could be duly circulated as a document of the thirty-seventh session.

* Reproduced as received, in the language of submission only.

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Annex to the note verbale dated 26 April 2018 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Letter dated 20 April 2018 from the Deputy Prime Minister and Minister of Foreign Affairs of the Turkish Republic of Northern Cyprus addressed to the United Nations High Commissioner for Human Rights

I have the honour to refer to the report of the Office of the United Nations High Commissioner for Human Rights on the question of human rights in Cyprus, dated 9 February 2018 (A/HRC/37/22) and covering the period from 1 December 2016 to 30 November 2017, which was circulated on 15 March 2018. In this regard, I would like to bring to your kind attention the following facts and considerations.

At the outset, I wish to recall that the views of the Turkish Cypriot side regarding the advance copy of the report had been conveyed to Your Excellency's office through our letter and its annexes dated 29 December 2017. As we had conveyed in the said letter, I wish to reiterate our appreciation for the direct channel of communication established between your Office and the relevant Turkish Cypriot authorities in order to obtain first-hand information regarding the situation of human rights in the North. The said letter also conveyed our views and positions regarding the various components of the advance report. While these positions still stand, I would like to take this opportunity to reiterate various points in light of the circulation of the final report, and to also address the revisions that have been made.

As regards the most noteworthy change to the substance of the report, it has been observed that the lengthy analysis of the political situation regarding the negotiation process has been completely removed from the "Introduction" section of the report, only to be replaced by a more general account of the physical division of the island in paragraphs 1–3. Not only do these paragraphs fall short of providing a description of the collapse of the negotiations in Crans-Montana, Switzerland in 2017, but, consequently, do not explain the reason behind the collapse, namely, the intransigent stance displayed by the Greek Cypriot side in Crans-Montana through their insistence on positions which were neither acceptable to the Turkish Cypriot side, nor in line with the framework set out by the Secretary-General.

Moreover, Section II. Challenges for the implementation of international human rights standards refers to difficulties regarding monitoring of and reporting on the human rights situation in the northern part of the island. This is wholly misleading, since the Turkish Cypriot side has repeatedly displayed the utmost constructiveness in meeting with and conveying relevant information to UN officials regarding the situation of human rights. Furthermore, the persistent reference to the division of the island seems to imply that the division is the root cause of the human rights situation on the island. This is also erroneous, since the division of the island is the symptom, not the cause of the political Cyprus problem, i.e. Greek Cypriot ideals of Hellenism which aimed to destroy the 1960 Republic of Cyprus as soon as it was founded, in an attempt to achieve *Enosis* (union with Greece). Nevertheless, since then the Turkish Cypriot side has displayed utmost goodwill at the negotiations to reach a comprehensive settlement to the Cyprus issue, while the Greek Cypriot side has rejected every major settlement plan to date. Former Greek Cypriot Foreign Minister Nikolas Rolandis confirms this in his article dated 30 January 2008. Since then, the Greek Cypriot side has also rejected the proposed settlement framework, at the aforementioned Cyprus Conference in 2017.

Against this background, it has been observed with dismay in the Conclusions section of the report that the link between the collapse of the Cyprus Conference and the situation of human rights has been de-coupled. While the advance report had stated that "In view of the closure of the Conference on Cyprus during the reporting period, and the

unclear future of the political negotiations, it is critical to address the underlying and persisting human rights concerns relating to the division of Cyprus", the report has merely noted that "It is critical to address the underlying and persisting human rights concerns relating to the division of Cyprus". In this vein, we would have preferred the report to include a comprehensive and accurate section on the negotiations, in which due reference is given to the party which was directly responsible for their collapse in Crans-Montana. In this sense, while the intention of the report may have been to go into less detail about the political situation so as not to upset either of the sides, it appears that this decision may have been taken primarily as a result of Greek Cypriot objections to the initial wording regarding the closure of the Conference on Cyprus.

Any wording which would de-couple the political situation and the human rights situation also detracts from the human rights violations committed well before the division of the island, as in the onslaught of the Greek Cypriots on the Turkish Cypriots following the collapse of the 1960 Republic in 1963. Moreover, the omission of the details of the political situation undermines the underlying cause of the continuation of the status quo, which cannot be attributed to both sides.

As regards the main body of the report, it should be underlined, once again, that the references to the so-called "Government of the Republic of Cyprus" reflect neither the realities nor the legal position on the Island. Ever since the forcible expulsion of the Turkish Cypriot co-founding partner from the 1960 partnership Republic, there has been no constitutional Government representing both peoples of the Island. The Turkish Cypriot people did not accept the forceful takeover of the Partnership State by the Greek Cypriot side in 1963 and, through their decisive resistance, prevented the Greek Cypriot side from extending its authority over them. Hence, since December 1963, there has not been a joint central administration on the Island capable of representing both peoples, either legally or factually. Each side has since ruled itself, while the Greek Cypriot side has continued to claim that it is the "Government of Cyprus".

In paragraphs 12, 15, 16, 17 and 18 where the issue of missing persons is taken up, the data provided may be accurate but missing some details. While we welcome this accurate portrayal of data, we would like to further reiterate the following:

With respect to the question of missing persons, the Greek Cypriot side has not been pursuing a proactive approach to providing the Committee on Missing Persons in Cyprus (CMP) with the necessary assistance to contribute to the CMP in achieving tangible results. In this respect, the request of the CMP to excavate in the military areas under the control of the Greek Cypriot side was not accommodated for about 8 months. Also, the Greek Cypriot side is yet to give any response to the call of the CMP to search their military or police reports, log books, medical reports or any other document that may include information about burial sites or remains belonging to missing persons. None of the criminal investigations conducted into the deaths of Turkish Cypriot missing persons resulted in either the identification of the perpetrators or the prosecution of those identified. The Greek Cypriot side did not provide the families of the Turkish Cypriot victims with any redress, including adequate compensation and psychological rehabilitation. These factual developments, which can also be confirmed from the relevant authorities, particularly from the CMP, need to be included in the final report in order to help encourage the Greek Cypriot authorities to more effectively contribute to the work of the Committee as well as to promote the right of the families of the missing to learn the fate of their loved ones, including the circumstances of their loss, moreover to provide them with the opportunity for final closure.

It should also be stressed that the Greek Cypriot omissions are also contrary to the calls of the Human Rights Committee as stated in paragraph 10 of its concluding observations in the fourth periodic report, where the Human Rights Committee asked the Greek Cypriot side to "provide support to the Committee on Missing Persons and take immediate steps to investigate all outstanding cases of missing persons from both the Greek and Turkish communities in an effective, transparent, independent and impartial manner" and "… also ensure that the families of the victims obtain appropriate redress, including adequate compensation and psychological rehabilitation, and that the perpetrators are prosecuted and punished as appropriate."

On the other hand, as previously conveyed to Your Office, the Turkish Cypriot side has been pursuing a proactive approach and further accommodating excavation requests of the CMP by providing its permission to excavate in an eleventh military area, where the understanding reached with the CMP was to excavate in 10 military areas per year on the basis of its workplan for the year 2017. These factual realities are not adequately reflected or not reflected in the advance copy. It is most unfortunate that the constructive efforts of the Turkish Cypriot authorities are disregarded and, moreover, reference is made to Turkish military or authorities for decisions directly made and/or results acquired by Turkish Cypriot authorities. Moreover, the fact that an archive committee has been established by the Turkish Cypriot authorities to examine the relevant archives for the information requested by the CMP of the location of remains has also been omitted in the advance copy.

On 21 September, Ministers' Deputies in the Council of Europe (CM-DH) took note of these developments with interest. At the same time, progress has been made in the criminal investigations conducted by the Turkish Cypriot authorities into the death of Greek Cypriot missing persons. So far, the Missing Persons Unit has finalized 476 criminal investigations and submitted them to the Attorney-General's Office. The Turkish Cypriot Attorney-General's Office completed 197 of the files and shared them with the families. These positive developments need to be included in the final report not only because they are factual information but they also constitute a source of hope for the relatives of the remaining Greek Cypriot missing for final closure.

We welcome that property rights section of the report took into consideration the suggestion we had conveyed in our letter of 29 December 2017 regarding paragraph 40 (of the draft report). On the other hand, we have observed with regret that paragraphs 32, 33, 34, 35 and 36 regarding the property rights issue did not provide any information regarding the property rights of Turkish Cypriots in South Cyprus. In this regard, it should be reiterated that the fact that there are no reporting on this issue or that there are no property claims by Turkish Cypriots to the European Court of Human Rights (ECtHR) for their properties in the South does not mean that Turkish Cypriots do not have such claims. In fact, the main issue which should have been cited in the report is that there is no domestic mechanism in the South comparable to the Immovable Property Commission in the North dealing with Turkish Cypriot property claims. Hence, it is almost impossible to exhaust domestic remedies.

Moreover, the Guardianship Law in the South further hinders the rights of Turkish Cypriot property owners because it relinquishes these rights to the Greek Cypriot administration as the "caretaker" of these properties pending a political settlement in Cyprus. This is what should have been reported in the report, to draw attention to the real reason behind the current lack of claims to the ECtHR. These facts, as well as other legal arguments and positions of the Turkish Cypriot sides regarding the property issue have been duly conveyed to Your Office in the aforementioned letter dated 29 December 2017.

In paragraph 20, the Güzelyurtlu application to the ECtHR regarding the murder of three members of a Turkish Cypriot family in South Cyprus in 2005 is included in the report in a very detailed manner, citing long paragraphs from the court decision, which unfortunately resulted in giving the wrong message. While the depiction of the incident itself and the following developments are mainly accurate, by citing directly and selectively from the court decision, which inevitably included defence arguments of the present parties, namely Greek Cypriot claims, the report not only fails to reflect the main issue leading to human rights violations but unnecessarily repeats Greek Cypriot rhetoric used at the court case, which persistently considers the Republic of Turkey as its counterpart and therefore makes sure that in any discussion of human rights issues on the Island, the Republic of Turkey is also held accountable. The fact that the report records these Greek Cypriot claims in great detail can therefore be misconstrued as being biased in favour of the Greek Cypriot side. In this connection, the undeniable fact should be recalled that there are two separate administrations on the Island and that the TRNC administers full sovereignty and jurisdiction in the North. While the report does in fact touch upon the fear of the Greek Cypriot side to cooperate with Turkish Cypriot authorities so as not to imply "recognition of the TRNC", it fails to reflect that the real reason leading to human rights violations in this case was the determination of the Greek Cypriot side to put political considerations

ahead of humanitarian ones. In this particular case, cooperation between the two sides on the island, namely the Turkish Cypriot side and the Greek Cypriot side, could have enabled a resolution to the case, but instead, the Greek Cypriot side opted to file its claims directly to Turkey, which is neither the relevant nor the competent authority on the matter. Had the Greek Cypriot side directed its requests to its real counterparts, the Turkish Cypriot authorities, a human rights failure could have been avoided. Instead, Greek Cypriot authorities opted to direct their demands to the Turkish authorities, in full awareness of the fact that they could not comply, and made political use of the inevitable result at the cost of human rights. In order to avoid serving Greek Cypriot political aspirations in yet another human rights platform, we strongly request that the relevant paragraphs of the advance copy be revisited and only factual information provided, and that direct citing culminating in supporting Greek Cypriot political claims is avoided in the reporting terminology.

We have no doubt that by referring to court cases and incidents reported by other sources, Your Office aims to help prevent the recurrence of similar human rights violations rather than acknowledging legal or political claims as true. In this respect, it is most important to convey the clear message that the two sides on the island should do their utmost regardless of political considerations to prevent human rights abuses and to promote justice as well as rights and freedoms. In conclusion, we trust that Your Office will not hesitate to reflect by maintaining its impartiality in the case of the unfortunate Güzelyurtlu murders. The failure of the Greek Cypriot side to cooperate with the Turkish Cypriot authorities, its refusal to provide the requested information regarding the perpetrators to the Turkish Cypriot authorities, and also its refusal to demand extradition from the Turkish Cypriot side led to the impasse in serving justice. We are sure that while courts give their verdict on legal arguments presented to them, human rights promoters should advocate for the protection of human rights through legal and practical means aimed at serving human rights regardless of any other consideration. We, therefore, have no doubt that the best approach and wording should be utilized in your final report to predominantly serve human rights and freedoms while reflecting factual developments.

In paragraph 27 of the report, the issue of humanitarian assistance provided by Southern Cyprus to Greek Cypriots and Maronites living in the North is taken up. In this regard, it is factually erroneous to state that "UNFICYP was obliged" to limit its delivery to medical supplies, since it is not UNFICYP itself which decides on the content of the goods that will be delivered. In fact, UNFICYP is simply a facilitator in delivering the items supplied by the Greek Cypriot authorities, upon the request of the Greek Cypriot side. The custom duty which was introduced, therefore, applies to the Greek Cypriot authorities, not UNFICYP. The report falls short of making this distinction and rather uses wording which can lead to a misrepresentation of the issue at hand.

Notwithstanding these shortcomings regarding the reporting of the custom duty, I would like to bring to your attention that we have recently adopted a Council of Ministers decision for the implementation of a new procedure regarding supplies provided by the Greek Cypriot administration and delivery by UNFICYP to the Greek Cypriots and Maronites domiciled in Northern Cyprus. These decisions will be exempt from customs duty. This decision has been taken under the presumption that the consumables transported to Northern Cyprus will not be sold in our local markets of used for any other commercial activity. Any act as such is prohibited and shall be punishable under our relevant laws and legislation.

I would like to underline that Greek Cypriots and Maronites living in the North are not "enclaved" at all. This assertion of the Greek Cypriot side is only meant for political exploitation. In reality, the Greek Cypriots and Maronites who have chosen to reside in Northern Cyprus enjoy access to religious, educational and health facilities in the North and are able to benefit from all health, municipal, etc., services that are afforded to TRNC citizens.

The issue of freedom of movement is taken up in paragraphs 28, 29, 30 and 31. While we welcome the fact that this section of the report mentions the obstacles faced by many Turkish Cypriots in crossing to the South, we regret that the report did not mention issues faced by third party nationals who arrive in Cyprus at Greek Cypriot ports, visit Southern Cyprus but also wish to cross to and stay in hotels in the North.

A memorandum issued by the Greek Cypriot Ministry of Foreign Affairs, as well as a circular of the Department of Migration, issued a strong warning to foreign citizens who wish to travel to the TRNC if they wish to stay at hotels in the North that either the buildings, or the land they were built on, were previously owned by Greek Cypriots, but failed to make this information known to foreign embassies and travel agencies. Firstly, it is important to underline that the owners of the hotels in Northern Cyprus are the bearers of title deeds issued by the relevant Turkish Cypriot authorities and function in accordance with the rules and regulations in the North. The Greek Cypriot administration, however, attempts to discourage tourists from visiting Northern Cyprus by making political claims and false propaganda. Secondly, whether the Greek Cypriot side conveys this information to foreign embassies and travel agencies or not, we are of the firm belief that the international community should not pay any attention to such attempts to block contacts with the Turkish Cypriots through claims of illegality.

This issue further solidifies the isolation of the Turkish Cypriots, and should have been mentioned in the report. As has become customary, the report merely refers to the all-embracing isolation of the Turkish Cypriots as a mere concern in paragraph 10. As stated in our previous letter dated 29 December 2017, the issue of isolation of the Turkish Cypriots is not a mere concern, but rather a tangible and inhuman reality faced by the Turkish Cypriots in every field of life. As always, we reiterate our call on the international community to finally put an end to this unjust treatment of the Turkish Cypriots with a view to promoting human rights and freedoms.

The report should have also drawn attention to the intensive and constructive efforts of the Turkish Cypriot side in the work to open two new crossing points, namely Aplıç and Derinya. While the Greek Cypriot side has created many obstacles to this process, the Turkish Cypriot side has cooperated with the utmost goodwill to ensure that both the technical and political requirements to open the crossing points are being met.

The issue of religious freedom as taken up in paragraphs 42, 43 and 44 gives a negative and wrong impression regarding the religious freedom that Greek Cypriots enjoy in Northern Cyprus. I would like to point out that the number of religious services facilitated by the Turkish Cypriot side keeps increasing each year. While a total of 38 religious services were approved in the year 2013, this number reached 71 in 2014, 96 in 2015 and 109 in 2016. In addition to this, as it can be seen from the enclosed list that the number of approved religious services conducted in the religious sites situated in the Turkish Cypriot side between 1 December 2016 and 1 December 2017 reached 82.

On the other hand, as also mentioned by the Special Rapporteur in the field of cultural rights, Ms. Karima Bennoune, in her preliminary conclusions and observations at the end of her visit to Cyprus on 6 June 2016, many Muslim places of worship in South Cyprus are locked at all times with no known procedures for applying for personal or collective access and/or religious pilgrimages. The small number of mosques which are relatively accessible, including the Holy Hala Sultan Tekke Mosque, are open for prayers just once a week and only during official working hours. We expect that these important facts are included in the final report.

We welcome that paragraph 55 of the report states that there have been no developments regarding a Turkish language school in Southern Cyprus. However, we strongly believe that this fact needs to be addressed in a more detailed manner in order to give a clear message to the Greek Cypriot authorities that providing limited access to Turkish-speaking teachers or limited education in Turkish language cannot replace or honour the right of Turkish Cypriot children to free and full access to education in their mother tongue. It is high time that the Greek Cypriot authorities are told openly that they should respect the rights of the Turkish Cypriot students residing in South Cyprus and establish a Turkish language school in South Cyprus.

I would like to take this opportunity to emphasize that the Turkish Cypriot side reiterates its strong commitment to continue its efforts for promoting human rights in Northern Cyprus.

I hope and trust that in the interest of reflecting a more objective and balanced account of the situation vis-à-vis the issue of human rights in Cyprus, the views and observations of the Turkish Cypriot side will be duly taken into consideration and will be reflected accordingly in future reports of the Human Rights Council.

(*Signed*) Kudret **Özersay**
Deputy Prime Minister and
Minister of Foreign Affairs of the
Turkish Republic of Northern Cyprus