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Opening Remarks
by
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Panel Discussion on
“Human Rights of Migrants in Detention Centres”

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Mr. President,
Distinguished Members of the Human Rights Council,
Distinguished Panelists,
Ladies and Gentlemen,

I welcome your thematic panel discussion which will focus on the human rights of migrants in detention centres. Indeed, the decision of the Human Rights Council to tackle this specific issue is very timely.

For my part, I miss no opportunity to highlight that the plight of migrants, and particularly migrants in an irregular situation, is one of today's most critical human rights challenges. Promoting a human rights-based approach to migration will be one of the priorities of my Office for the next biennium. In this framework, one of our tasks is ensuring that immigration control does not compromise human rights.

Allow me to offer some preliminary and general observations. The human rights treaty bodies, the Special Procedures of the Human Rights Council and the Universal Periodic Review process have underscored with increasing urgency concerns about human rights violations related to the detention of migrants, and of asylum seekers. Moreover, these bodies have drawn attention to the overall context which facilitates such violations, including the disturbing trend to criminalize irregular migration.

Entering a State without a valid visa or overstaying a tourist visa are generally considered administrative infractions and not criminal offences. Often irregular migrants have been in a country for several years, earned an honest living through hard work which is frequently carried out in substandard and abusive conditions. Infractions of immigration rules do not make a person a criminal, one that society must guard against.

I share the opinion of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants and other human rights mechanisms who have stressed that criminalizing irregular stay in a country exceeds the legitimate interest of States to control and regulate irregular immigration and can lead to unnecessary detention.

The association of irregular migration with criminality promotes the stigmatization of migrants and encourages a climate of xenophobia and hostility against them. Semantics plays a role in fostering the growing sentiment of suspicion against these workers. Thus, we should avoid using terms such as "illegal immigrants" to describe their status. Rather we must employ the internationally accepted definitions of "irregular" or "undocumented" migrants, which more accurately describe the situation of not having, or having lost, the proper documents allowing them to reside in a given territory or to work there. This would help to clarify that most migrant workers in an irregular situation perform jobs which are perfectly legal and necessary in the countries in which they work.

Distinguished Members of the Council,

Moving now to a more specific discussion, I wish to highlight some key issues related to the theme of your panel today.

First, the question of the legal basis of detention must be probed against the fundamental human right which proscribes arbitrary detention. This right is enshrined in article 9 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Although the deprivation of liberty should be a measure of last resort, migrants arriving irregularly in a new country are often detained as a routine – or even mandatory – procedure, often without proper judicial safeguards. Specifically, this means that, all too often, detained migrants are not adequately informed about their rights or do not have the right or capacity to challenge the legality of their detention before an independent court. Such procedures do not spare migrant children, who in many countries can be held in prolonged administrative detention without proper justification.

Although, many States have tried to strengthen safeguards by informing migrants about their rights and by removing obstacles that hamper reports of, and recourse against, abuse, the overall picture remains one of inadequate protection, leaving too much room for arbitrariness.

The United Nations General Assembly recognized this serious problem in its resolution 63/184, adopted in March this year, when it called upon all States, and I quote: “to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention” end quote. The General Assembly also called on States to avoid excessive periods of detention of irregular migrants through appropriate reviews and to adopt, whenever possible, alternative measures to detention.

The issue of arbitrary detention gives rise to the question of when and under which circumstances administrative detention of irregular migrants can be justified. The Human Rights Committee has concluded in a line of cases that a decision to keep asylum seekers in administrative detention must be reviewed periodically. The Committee also found that detention should cease as soon as the State can no longer provide appropriate reasons for it to continue. The Committee on the Rights of the Child has underlined that, in principle, migrant children should never be detained. Further, the Special Rapporteur on the human rights of migrants held that administrative detention of migrants on the grounds of their irregular status should under no circumstances be of a punitive nature.

Ladies and Gentlemen,

Another crucial aspect of your discussion pertains to the treatment and conditions of migrants who are held in detention. This relates to the fundamental human right which imposes an obligation on States to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person. Ill-treatment, overcrowding and inadequate access to basic economic, social and cultural

rights, such as health care services and education, are among the recurrent concerns and violations reported by the international human rights mechanisms.

Related to these observations is the important question of what possible alternative measures to detention should be enforced. Your meeting today will provide a very useful opportunity to share experiences and good practices in this regard.

In sum, I wish to underscore that international human rights norms and standards provide us with a solid framework to address the critical challenges related to the detention of irregular migrants. The Human Rights Council must play a key role in ensuring that immigration detention, and conditions and treatment of detained migrants, comply with international human rights law. I am confident that your deliberations today will bring us a step closer to that goal.

I thank you for your attention, and I wish you a fruitful exchange.