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**Committee on Migrant Workers
15th session, Geneva, 12 to 23 September 2011**

**Day of General Discussion on the Rights of Migrant Workers on an
Irregular Situation and Members of Their Families**

Opening statement

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**Palais Wilson – First Floor Conference Room
Monday, 19 September 2011, 10.00 a.m.**

Mr. Chairman,
Distinguished members of the Committee,
Excellencies,
Ladies and Gentlemen,

It is with great pleasure that I have joined you this morning to open the Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families. I would like to congratulate the Committee on Migrant Workers for hosting this important event.

In 2010, under the leadership of OHCHR, in a landmark joint statement the international organisations comprising the Global Migration Group (GMG) expressed their deep concern about the human rights of international migrants in an irregular situation. The GMG called on States to review the situation of migrants in an irregular situation within their jurisdiction and to work towards ensuring that their laws and regulations conform to international human rights standards. It noted that the irregular situation in which international migrants may find themselves should not deprive them either of their humanity or of their human rights.

Determining the extent of irregular migration in the world is very difficult, due to the clandestine nature of the phenomenon. Although the exact

number of irregular migrants cannot be known, such migrants have been estimated to comprise approximately 10% to 15% of the world's 214 million international migrants. This translates to tens of millions of individuals. Research tells us that the majority of such migrants will have entered the country of destination legally and only subsequently will have become irregular. While some will choose this status, others will have been forced into a situation of irregularity through an arbitrary, unlawful or discriminatory act.

The GMG statement affirmed that migrants in an irregular situation are more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process. They are often prevented officially from being able to access adequate healthcare, from renting decent accommodation, or from exercising their right to freedom of association. They are compelled to take jobs that are dirty, degrading and dangerous. In some countries irregular migrants are even unable to get married. We are also witnessing an increasing trend to criminalise persons who engage with migrants, whether they are public officials such as healthcare personnel, the police or teachers or private individuals such as landlords or employers, who are also at risk of criminal penalties for renting housing to irregular migrants or employing them. The message which is sent is that contact with migrants is a risk that is to be avoided.

Migrants are often the only people in a country who can be detained without having committed a recognisably criminal offence, and without judicial oversight and review. This detention can be for lengthy periods of time, often in severely substandard conditions, and in some cases is prolonged or even indefinite. In May 2011, OHCHR organised a Global Roundtable with UNHCR on the issue of alternatives to the detention of migrants, refugees, asylum-seekers and stateless persons, which benefited from the presence of Mr. Kariyawasam, a member of the Committee. That meeting urged states to limit their use of administrative detention and emphasised that there is no empirical evidence that detention deters irregular migration. Yet the association of irregular migration with criminality promotes the stigmatisation of migrants and encourages a climate of xenophobia and hostility against them.

The Office of the High Commissioner is of the opinion that human rights should be at the forefront of any discussion on irregular migration. Far too often this debate takes place solely in relation to concerns about security, border control and return and readmission. Thus ensuring the realisation of human rights in the context of migration is a thematic priority for OHCHR. The Office believes that migrants whose rights are protected and who are socially integrated, are able to live in dignity and

security and, in turn, are better able to contribute to society both economically and socially than those who are exploited, marginalised and excluded. The focus of our work on migration centres on promoting the integration of human rights norms and standards in all aspects of migration policy, at the national, regional and international level.

We will focus in particular on combating discrimination, racism, xenophobia, and related intolerance against migrants, on protecting the economic, social and cultural rights of migrants, on advocating for access to safeguards in the context of immigration detention and to alternatives to the detention of migrants, on opposing the criminalization of irregular migrants, and on protecting human rights in the context of mixed migration.

Irregular migration has increased and thrived not only because of push factors in migrants' countries of origin, but also because of a lack of coherence in immigration mechanisms and procedures in countries of destination. There is an urgent need for coherent, comprehensive and better coordinated frameworks to address migration which are explicitly premised on international human rights norms and standards.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families establishes a legal framework and provides guidance to States on applying general human rights norms to migrants. Our host for today, the Committee on Migrant Workers, monitors the implementation of the Convention by States parties, thereby working to ensure that the rights of migrants are not being traded off in the name of security or during times of economic difficulty.

As the Committee and the High Commissioner have repeatedly reiterated, it is of critical importance that more States ratify this important treaty. My colleagues and I stand ready to advise any State representative on how to set this process in motion.

Mr. Chairman,

Distinguished members of the Committee,

Excellencies,

Ladies and Gentlemen,

The Day of General Discussion on which you are about to embark will address a series of issues which are fundamental to the human rights of irregular migrants, including issues related to the protection of the labour rights of irregular migrants, issues of criminalisation and administrative

detention, and issues relating to the scope and content of fundamental economic, social and cultural rights including the right to health and the right to housing. You will also address the issue of international cooperation in respect of migration policies, and search for ways to empower and inform irregular migrants of their rights.

Your discussion is taking place against an international backdrop of growing intolerance of migrants and migration, and in the context of widespread inaccurate assumptions and negative stereotypes about migrants in an irregular situation. It is important to counter this damaging picture with evidence- and norm-based arguments, and today's Day of General Discussion is an invaluable opportunity to provide such facts and arguments. Contrary to popular perception, and with very few and narrowly defined exceptions, international human rights law protects the human rights of *all* migrants regardless of their legal status, including economic, social and cultural rights. Human rights are not a matter of charity or a reward for obeying immigration rules.

The Office of the High Commissioner for Human Rights is hopeful that today's discussion will enable the Committee to proceed expeditiously with the elaboration of a general comment on the rights of migrant workers in an irregular situation and members of their families. We look

forward with anticipation to learning the outcome of your discussions and to reading your final report.

I wish you a fruitful Day of General Discussion.