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ICJ Intervention in the Panel Discussion on Human Rights of Migrants in Detention Centres

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Mr. President,

States increasingly treat migrants, refugees and asylum seekers, as a potential threat to state security, and automatically subject them to measures such as security clearance upon entry into the country territory, administrative detention or expulsion.

As stated in the report of the ICJ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, the global response to terrorism has led to a dangerous conflation of immigration with terrorism, resulting in discriminatory policies and alienation of migrant communities.

The rights of migrants have been severely curtailed in many countries. One example is the recent Returns Directive of the European Union, which allows for detention of migrants up to 18 months. Its application has led to a substantial increase in the use and duration of immigration detention in a number of EU member states. The High Commissioner for Human Rights, Navanethem Pillay, clearly stated to this Council on 14 September 09 that "the practice of mandatory detention of irregular migrants, their criminalization and ill-treatment in the context of border control must cease."

Refugees and asylum seekers are also frequently subjected to mandatory detention without proper reasons for restricting their freedom of movement.

Detention of migrants, refugees and asylum-seekers, short of basic requirements and safeguards as established by international law to protect the right of individuals not to be arbitrarily deprived of liberty, amounts to arbitrary detention. International law requires that the application of detention – as a measure to prevent unauthorised entry of migrants into the territory or to facilitate deportation - conforms to basic principles, including the principles of subsidiarity and proportionality. The maximum length of detention of migrants must be provided for by national legislation, and be proportional to the circumstances in each individual case.

Detention should never be applied automatically or as a mandatory measure.

Migrants must never be placed in detention because of protracted removal procedures on part of responsible State authorities.

Immigration detention must be subject to judicial review by ordinary courts, which must be able to adjudicate both on formal requirements and on the merit of the order, and to order its revocation or modification with less intrusive measures, in accordance with the principle of proportionality.

Any departures from those principles must be addressed in accordance with the General Assembly resolution 63/184, which has urged States to prevent and punish any form of illegal deprivation of liberty of migrants by individuals and groups.

In any event, measures alternative to detention should become cornerstone of every migration

policy. Detention should be considered an exceptional measure to be used only in case of genuine concern for public security and safety.

The ICJ invites this Council to request the Office of the High Commissioner for Human Rights to conduct a comparative study of measures alternative to administrative detention of migrants, refugees and asylum seekers, and the Special Rapporteur on the rights of migrants to make recommendations to States on the implementation of such measures alternative to detention.

In addition, this Council should also call on States to undertake a comprehensive assessment of the impact of immigration laws and policies to ensure a) that immigration law is not used as a substitute for criminal law in countering terrorism, b) that detention pending deportation is not used as a disguised form of administrative detention on discriminatory grounds and c) that all detained migrants, refugees and asylum seekers can enjoy an effective right to remedy and due process guarantees.

I thank you.