

GFMD Thematic Meeting, Istanbul, 13-14 October 2011

**“Addressing Irregular Migration through Coherent Migration and
Development Strategies”**

Statement of the Global Migration Group

Presented by Ms Wan-Hea Lee, OHCHR

Excellencies,

Ladies and gentlemen,

On behalf of the Global Migration Group and the Office of the High Commissioner for Human Rights, I would like to thank the Governments of Turkey and Switzerland for inviting me to address this important meeting on irregular migration.

In November 2010, under the leadership of the High Commissioner for Human Rights (HCHR), the sixteen international organisations comprising the Global Migration Group (GMG) launched a landmark joint statement in which they 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 such migrants 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 migrants may find themselves does not deprive them either of their humanity or 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 number of irregular migrants cannot be known with certainty, such migrants are believed to comprise approximately 10% to 15% of the world's estimated 214 million international migrants. This translates into tens of millions of individuals. Research tells us that the majority of them will have entered the country of destination legally and will have become irregular only subsequently. Some will have chosen irregular channels of entry, but many others will have been forced into a situation of irregularity.

The GMG recognized 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. In some countries irregular migrants are unable to marry. They are often compelled to take jobs that are dirty, degrading or dangerous. Rendered vulnerable by their irregular status, these men, women and children are often afraid or unable to seek protection or relief from the authorities. The association of irregular migration with criminality promotes the stigmatisation of migrants and encourages a climate of xenophobia and hostility against them.

Migrants are often the only people in a country who can be detained without having committed a criminal offence, and without judicial oversight and review. Such detention can be for protracted periods of time, often in severely substandard conditions, and in some cases is indefinite. Yet recent research

undertaken by the GMG agencies underscores the lack of empirical evidence proving that detention effectively deters irregular migration. Accordingly, States are encouraged to explore all meaningful alternatives to immigration detention, particularly in the case of vulnerable migrants.

We are also witnessing an increasing trend to criminalise persons who engage with migrants, whether they are public officials such as healthcare personnel, police, 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. Non-governmental organisations that are engaged in providing humanitarian and legal support to irregular migrants are also at risk of criminalization. The message which is sent is that contact with migrants is a risk that is to be avoided.

Contrary to popular perception, and with very few and narrowly defined exceptions, international human rights law protects the human rights of *all* persons regardless of their legal status. Human rights are not a matter of charity or a reward for obeying immigration rules. The GMG believes 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. Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns cannot, and indeed, as a matter of international law do not, trump the obligations of the State to respect the internationally guaranteed rights of all persons, to protect those rights against abuses, and to fulfil the rights necessary for them to enjoy a life of dignity and security.

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. Existing legal channels for migration are often limited or out of the reach of most migrants, at the same time as economies and societies in countries of destination continue to demand migrant labour. 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. The GMG encourages all States to ratify and effectively implement this essential instrument.

The GMG calls upon States to review the situation of migrants in an irregular situation within their territories and to work towards ensuring that their laws and regulations conform with and promote the realization of the applicable international human rights standards at all stages of the migration process. The GMG recognizes the difficulties many States face and stands ready to continue to support them in their efforts to ensure the effective implementation of appropriate legislation, including through capacity development.

Our discussion today is taking place against an international backdrop of growing intolerance of migrants and migration, and particularly in the context of widespread inaccurate presumptions and negative stereotypes about migrants

in an irregular situation. It is important to counter this damaging perception with evidence- and norm-based arguments. The GMG 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.

As the Chairperson of the Committee on Migrant Workers stated in his closing remarks at the Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families, held during the Committee's 15th session in September 2011: "Many States have already recognized most of irregular migrant workers' rights under the Convention by virtue of their obligations under other international human rights treaties which they have ratified and which often guarantee these rights more comprehensively than the Convention. For example, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (1999), considers that all migrant workers are entitled to health care and interprets that right much more extensively than as a mere right to emergency medical care within the meaning of article 28 of the Migrant Workers Convention." He asserted that this indicated that the barriers to States parties' ratification and implementation of the Convention are, in fact, of a political rather than a legal or economic nature."

For that reason, the High Commissioner wholeheartedly welcomes your attention to the development of coherent migration and development policies

here today. On that note, I would like to conclude by thanking you all for your kind attention and wishing you a most fruitful meeting.