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## ***Immigration detention of Children: Coming to a Close?***

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I am grateful to the Czech government and Minister Pelikán for organising and hosting this conference. It could not have come at a better time.

During my mandate, I have visited numerous places where migrant children were detained. Sometimes with their families, sometimes alone. The conditions varied, but the final conclusion was inevitably the same: a detention centre is no place for a child. I have consistently maintained that no child should be subjected to detention because of their own, or their parents' migration status. Opposition to the detention of migrant children also been expressed by the Council of Europe's Parliamentary Assembly, which launched a campaign to end child detention in 2015; by UNHCR, which prioritised this in its global strategy on detention; and by a range of other UN actors, including – as I will highlight momentarily – the UN Committee on the Rights of the Child. The push to end immigration detention of children has also come from civil society, which has been an important driving force on this issue.

Despite these efforts, the detention of migrant children persists.

Even governments that continue to allow immigration detention of children will probably agree that no one really wants to see children deprived of their liberty. While the road from this general principle to concrete solutions is difficult, this is – I hope – something that unites us and will guide discussions over the next two days.

I want to highlight some points for these discussions, which I hope will be helpful.

First, it is easy to talk about detention in technical terms, as a way to “manage migration”. But we must not lose sight of the very negative impact that detention has on children. This is particularly clear when children are held in sub-standard conditions. However, even under “adequate” conditions, children are likely to experience feelings of loss of control, anxiety, fear and depression which can result in developmental problems. For unaccompanied children, the experience of being detained is especially frightening. But children detained with their parents also face such problems. They are subjected to the stress of their parents, and see disruptions in their normal family relations. Overall, detention, even for short periods, can be a very traumatising experience.

Detention also increases risks of ill-treatment. A number of reports in recent years have documented serious human rights violations suffered by detained migrants, including children, at the hands of law enforcement officials. It is crucial to act on such reports, including those from the Committee on the Prevention of Torture.

Given the risks, it is encouraging to see international norms increasingly argue against child detention. In Strasbourg, the European Court of Human Rights has delivered a number of judgments considerably restricting the possibility to detain children, pushing states to consider alternatives even more stringently than before. I particularly note the various judgments against France, issued last year, in which the Court stressed that, even when the material conditions of the facilities were

considered appropriate, the accumulation of psychological and emotional aggressions to which children in administrative detention were subjected necessarily had negative consequences on them. This could amount to breaches of Article 3 ECHR. Of course, some will highlight that the Court does not state that detention of migrant children should generally be prohibited. Nonetheless, to me, the Court's recent case law hardly seems a ringing endorsement to continue business as usual.

I would also like to point to the International Convention of the Rights of the Child. It is the single most widely ratified human rights instrument in the world, with 196 states party to it. This shows the significance that is universally attached to protecting children's rights around the world. The Committee on the Rights of the Child (CRC) has done significant work on the interplay between immigration detention and children's rights. Its views have evolved over the years but are now unequivocal. In 2012, the Committee held a General Day of Discussion on 'the rights of all children in the context of international migration'. It concluded that:

*The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.*

The importance of this conclusion, in my view, cannot be emphasized enough. It sets a clear benchmark for the direction that state action should take. If we want to effectively protect the rights of children, we need to strive for the highest standards possible.

Despite this, the detention of migrant children is making a comeback. In response to increased arrivals of asylum seekers and migrants in 2015-2016, automatic detention has often been introduced as a first solution. I have followed with concern the temporary deprivation of liberty in Greece and Italy, especially just after the opening of "hotspots". It is my understanding that automatic detention is now also applied in Romania in its response to boat arrivals. The much-criticised detention of children in Hungary's transit zone is another instance that has garnered attention.

But the problem of child detention is not just one of the states in the south or on the Balkan route. This year, I expressed my concern that [Luxembourg](#) adopted new rules to extend the maximum period of detention for minor migrants. Just last week, I visited Luxembourg and was struck by the image of a playground surrounded by barbed wire in the detention centre. Perhaps most disheartening was the decision by the Belgian government to [resume the practice of detaining migrant](#) children in closed facilities, after it had led the way in providing alternatives to detention, a practice that many other states looked towards to learn about how to best prevent the detention of children. I understand that building on a new detention facility in order to accommodate families with children started only last week.

In fact, several countries propose to build more "child-friendly" detention centres. I believe that providing playgrounds, toys and child-friendly corners is no substitute for ensuring children are not deprived of their liberty to safeguard the child's well-being and best interests.

Getting from the general principle of non-detention to practical solutions is not easy. The good news is: there are alternatives. Extremely helpful guidance has been published in the last few years, including by UNHCR, with its options paper, FRA's recent report, the Parliamentary Assembly's work and a coalition of NGOs gathered under the International Detention Coalition. Within the Council of Europe, important work on the legal and practical aspects of alternatives is currently under way.

Research and practice have shown that children's rights are in most cases better protected in places in which they are not deprived of liberty. They can live a more or less normal life, access education and benefit from social, health and other support that they require. It has also been reported that persons accommodated in non-custodial accommodation can better prepare for the next steps in their life, whether they will be able to continue to live in the country of reception or will have to return to their country of origin.

Not all alternatives work for all migrant children in the same way. This does not relieve us from the duty to keep exploring how we can make alternatives better. Yes, it is frustrating if an alternative leads to high percentages of people absconding. But the first question should then be: how can we improve

the alternatives, what can we adjust? Simply shrugging and saying: the only thing that works is detention, is not a sustainable solution. Particularly because the fear of detention may itself be a reason why children abscond.

In this context, we should also be careful about the standards we hold alternatives to. A common criticism of alternatives by governments is that too few people returned to their countries of origin. Again, we need to look at what improvements are possible. But let us be honest, return percentages from detention centres in many member states are also often low. Why do similar rates prompt loud calls for ending alternatives, but not to close detention facilities? This, I think, gives cause for reflection.

Protecting children from trafficking and exploitation is another challenge. I am fully aware of the heart-wrenching examples of children disappearing from non-custodial facilities. However, the argument that detention is for children's own good is also not satisfactory. Effective, tailor-made guardianship systems can provide an important way out of having to choose between the lesser of two evils.

If we really want to protect children, we need to show stamina, and not throw in the towel at the first problems we encounter.

Implementation problems are not the only barrier to ending child detention. The political pressures to continue detention can be strong. From domestic audiences, who demand that government are tough on irregular migrants, and who drive the government into trying to make countries as undesirable as possible. But the pressures are also international. I was particularly [dismayed](#) to see the European Commission, in March this year, issuing a recommendation through which it effectively called on member states that currently prohibit detention of migrant children to ensure their laws enabled such detention. Standing up in such a context, and saying: we will not detain children, requires political courage.

Let me finish with a few recommendations.

1. Particular attention needs to be paid urgently to the thousands of migrants, including children, who are currently detained in seriously sub-standard conditions in detention centres, or are held in detention-like situations, including in "hotspots". Ensuring CPT reports are made public and their recommendations acted upon is crucial.
2. Not detaining children is the best prevention. In this context, it is crucial that national governments set out a roadmap to end child detention. Even if this cannot be achieved immediately, it is important to publicly show this is the aim and to identify what needs to be done to achieve it.
3. This needs to be a collaborative effort. Only if governments, international organisations, NHRIs and civil society put their heads together to look for solutions that work for all, can we make progress. Looking at the participants here to today, I am encouraged to see lots of potential to be utilised.
4. Data collection needs to be improved. This year's study by the EU Fundamental Rights Agency provides a useful step, but it also highlights that there are still significant gaps about how often children are detained for migration purposes, what alternatives are applied, and what the results of these alternatives are.
5. Finally, we cannot tackle this issue without looking at the broader context of migration policy. Its approach to irregular migration is currently centred around preventing departures and on enforcing return. It should also be about ensuring that people do not have to come to Europe in an irregular way in the first place. Unfortunately, my recent work on family reunification for refugees has shown that safe and legal routes are increasingly cut off, stimulating irregular migration, both to Europe and between European states. This only increases the risk of creating a new generation of children that could be faced with immigration detention.

Despite the various problems I see, and the criticism I have raised throughout my mandate, the mere fact that this conference is being held, gives rise to optimism. I again thank the Czech chairmanship, Minister Pelikán and all those involved for organising it, and I look forward to its results.