

**Presentation by Professor François Crépeau
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Preparing for the 2013 High-level Dialogue: A Human Rights Perspective

It is an honour for me to participate, for the first time since my appointment by the Human Rights Council in July 2011, in this important meeting which allows for collective thinking and strategizing in the critical field of international migration and development. Coordination is essential to ensure impact and engender positive long-term change with respect to policies, laws and the public discourse on migration. This is particularly true in view of the fact that the rights-holders concerned – migrants themselves – are often poorly organized and mobilized due to language barriers, lack of resources and awareness of their rights or out of fear of being returned to their country of origin. As noted in my address to the General Assembly last October, “their aim is to blend, to fit in, particularly if they are irregular migrants”. Therefore, the better coordinated our actions, the greater the likelihood that we – as the international mobilizers of migrants’ rights – can have a real impact in terms of protection and support.

As Special Rapporteur on the human rights of migrants, it is my duty to bring the human rights of migrants at the centre stage of debates on international migration. Migration concerns individuals with rights and dignity. Migrants do not *move from* their human rights, they *move with* their human rights – The critical *movement* we should pay attention to concerns States’ responsibility to ensure implementation of their rights. In this regard, there is an urgent need to counter the increasing social acceptance of xenophobic and anti-immigrant discourse which de-humanizes the movement of individuals in search for a better life behind populist terminologies such as “flocks”, “flows”, “waves” of people. In such discourse, the individual has no place, no name, and no rights. It also severely undermines public understanding of the positive contribution that migrants as engines of new experiences, perspectives and ideas bring to a country’s social and economic development.

While States have recognized - at the *international* level - that “respect for the human rights and fundamental freedoms of all migrants is essential for reaping the benefits of international migration”,¹ this is yet far from translating into reality at the *national* level. It is therefore my aspiration that our collective contribution to the 2013 High-Level Dialogue should aim at bringing about a watershed change in how migration is perceived and responded to. Just as the international community in 2005 recognized that “development, security and human rights go hand in hand”,² the 2013 High-level Dialogue should affirm that migration, human rights and development are interdependent and mutually reinforcing. There can be no

¹ GA Res 65/170, International migration and development, para. 4.

² In larger freedom: towards development, security and human rights for all, UN Doc. A/59/2005, para. 14.

sustainable development deriving from international migration unless migrants can enjoy their fundamental human rights and freedoms. Conversely, stronger guarantees for the protection of migrants' rights can only further development – regardless of States' level of socio-economic and human development – as their participation in and contribution to society will be officially recognized and protected under the rule of law.

While this “inextricable connection between migration, development and human rights has been insufficiently explored” there is indeed a “general agreement that the beneficial effects of migration in terms of poverty reduction, development and wealth creation is higher than the human resources and financial costs spent by States to invest in new technologies to protect their borders and for the provision of social services”.³ As the international guardians and mobilizers of the human rights of migrants, we need to work tirelessly to ensure this affirmation ahead of and during the 2013 High-Level Dialogue.

In this regard, the nexus between the protection of the rights of migrants in an irregular situation and development should be the focus of our attention. We recall that the deprivation of the human right to development is often one of the causes, or push factors, of migration itself.⁴ However, more importantly, the existence of a cheap-labour market in countries of destination or transit in high demand of the skills of migrant workers is an essential pull factor of migration which is most often ignored by States. Upon arrival in host countries, migrants are subsequently often denied even the most basic labour protections, due process guarantees, personal security and health care due to their undocumented status.⁵ Unless we fight this cheap-labour market, undocumented migration will continue, and exploitation and abuse will remain pervasive.

The 2013 High-Level Dialogue should therefore be geared towards gaining consensus on the need to sanction employers engaging in illegal and exploitative employment, rather than sanctioning migrants through criminalization of irregular entry and stay in the country. We know that - as early as 1975 - the International Labour Organization (ILO) adopted Convention No. 143 on Migrant Workers which sets out that “Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members [...] to *suppress* clandestine movements of migrants for employment and *illegal employment of migrants*”. Regrettably, in reality, States are increasingly applying a control-based rather than rights-based approach in regulating labour market migration which results in expulsion of many migrants, but merely affordable penalties of employers. By doing so, States actually entrench their cheap-labour markets and protect this powerful pull factor.

Regularization is generally considered one of the best ways to put an end to illegal practices of unscrupulous recruitment agencies and to exploitation of migrant workers, as well as to ensure their social protection and equal treatment with nationals. Regularization programmes have proved capable of decreasing both poverty and unemployment. One example is the “Patria Grande” regularization programme of Argentina under which 225,000 migrants from MERCOSUR and associated countries between 2006 and 2010 were regularized.⁶ Such good practices were discussed at the Committee on Migrant Workers' Day of General Discussion on the right of migrant workers in an irregular situation and members of their families, held in

³ International Migration and Human Rights, Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights, 2008, pp. 3 and 5.

⁴ Ibid, p. 4.

⁵ CMW/C/15/CRP.1, para. 1(b).

⁶ Ibid., para. 9.

September 2011, in the lead up to the adoption of a General Comment on the same topic. The General Comment will provide important guidance to States parties to the International Convention on the Rights of All Migrant Workers and Members of their Families – currently 45 – on the the rights of migrant workers in an irregular situation, as well as practical recommendations for their implementation. The adoption of the General Comment No. 2 by the Committee will be an important contribution and input to the 2013 High-Level Dialogue.

In parallel, the Committee on the Rights of the Child, the United Nations treaty body in charge of monitoring compliance with the Convention on the Rights of the Child, will hold a Day of General Discussion in September 2012 on Children in Situations of Migration. I intend to contribute to its deliberations which will also result in a General Comment – another welcome UN treaty body activity ahead of the 2013 Dialogue.

I attach utmost importance to these events, especially in view of my mandate which recognizes the “particular vulnerability of *women, children and those undocumented or in an irregular situation*” when examining ways to overcome obstacles to the full and effective protection of the human rights of migrants.⁷ The fundamental principle that guides me in the implementation of this mandate is that all human rights – with very few and well defined exceptions – apply to all migrants, irrespective of their status. The Universal Declaration of Human Rights from 1948 clearly states that “everyone” is entitled to the rights and freedoms set forth therein. This principle is replicated in the two Covenants (ICCPR and ICESCR) which explicitly refer to “national origin” as a prohibited ground of discrimination in the enjoyment of civil, political, economic, social and cultural rights. The fundamental tenets of international human rights law – non-discrimination and equality of treatment – have to be fully applied to migrants, just as they are to any other marginalised group in society. Ensuring the prohibition of discrimination in law and practice has been identified as a key challenge in ensuring protection of the human rights of migrants at the national level.⁸

The trend to criminalize irregular stay and entry and the increasing use of immigration detention is perhaps the most blatant example of how migrants – especially those in an irregular situation – are accorded lower standards of protection compared to nationals. Fundamental safeguards of access to a lawyer, to an interpreter, contact with the external world, and to an independent doctor of choice exist – at best – primarily on paper. As stated at the outset, there is a critical need to remind States that their human rights responsibilities and obligations apply equally to nationals and non-nationals without any distinction in all aspects of immigration management, in particular in the context of deprivation of liberty.

I have stressed on several occasions that irregular migration is not a crime and is, at most, an administrative offence. Contrary to general belief, there is no evidence that detention deters irregular migration or discourages persons from seeking asylum.⁹ I have seen in person the tragic consequences at an individual level of the prevailing security- and control-oriented approach to immigration management as well as its negative repercussions in terms of creating a culture of respect for diversity at the societal level. The 2013 High-Level Dialogue should send an unequivocal message that the punitive response to irregular migration through detention and

⁷ A/HRC/RES/17/12, para. 1(a) (emphasis added).

⁸ International Migration and Human Rights, p. 38.

⁹ Global Roundtable on Alternatives to Detention of Asylum-seekers, Refugees, Migrants and Stateless Persons, 11-12 May 2011, p. 1.

criminalization must be avoided. How can otherwise the benefits of migration to development be reaped, both conceptually and in practice?

In this regard, I hope that my forthcoming thematic report to the Human Rights Council in June this year on the detention of migrants in an irregular situation will make a useful contribution. The report will emphasize good practices of alternatives to detention. Informing and sensitizing States and the general public of the benefits of a non-punitive approach to immigration management is an indispensable aspect of advocating for the interdependency of migration, human rights and development. Together with the Office of the High Commissioner for Human Rights (OHCHR), the Chairperson of the Committee on Migrant Workers and representatives of civil society, I made this appeal in the framework of the 2011 Global Forum on Migration and Development (GFMD) during two side events on the human rights of migrants in an irregular situation.

I regret that very few State representatives were present in these meetings. If the 2013 High-Level Dialogue is to embrace the interrelationship between migration, human rights and development, we need to communicate effectively with States on two basic principles: *(i)* migrants enjoy all basic human rights on an equal basis with all and *(ii)* protecting these rights is not only a legal obligation but also in the interest of furthering legitimate, representative, innovative, and culturally diverse nation states. A dedicated session on human rights, development and migration in the official GFMD 2012 could be contemplated as a concrete step towards this objective.

“Everyone”, “no one”, “all” – the language of the Universal Declaration of Human Rights leaves no shadow of a doubt that all rights and freedoms apply to all members of humanity. Migration poses a critical test in States’ commitment in this regard. I look forward to engaging with all of you in our common endeavour to ensure that this commitment is heeded to.

I thank you for your attention.