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## **UNITED NATIONS EXPERTS EXPRESS CONCERN ABOUT TENDENCY OF STATES TO CRIMINALIZE IRREGULAR MIGRATION AND SAY DIGNITY HAS NO NATIONALITY**

### **Issue Statement to Mark International Migrants Day, 18 December 2011**

Following is a joint statement by United Nations experts\* to mark International Migrants Day, which is commemorated on 18 December:

GENEVA – “Let us recall on this International Migrants Day that migrants are often the engine of innovation and growth, as positive societal change is dependent on new ideas, perspectives and experiences. Socio-economic data and relevant studies show that the protection of the human rights of migrant workers, whether in a regular or irregular situation, reinforces the positive impact of migration on development and productivity at the national level.

It is therefore with utmost concern that we see a tendency of States to criminalize irregular migration. Crossing the border is not per se a crime; it is at most an administrative offence. The trend to criminalize irregular migrants or persons assisting migrants in an irregular situation not only runs contrary to humankind’s historical need and wish to seek and learn from new opportunities, but puts at risk fundamental human rights of people in search for a better life.

Criminalization most often implies detention of irregular migrants. Innocent persons, including children and women, are deprived of their dignity and fundamental safeguards of access to a lawyer, independent doctor and contact with the outside world, including their families. We therefore express concern about increasingly restrictive migration policies in certain countries at the expense of migrants’ rights, as reflected by the high number of administrative detentions of migrants in an irregular situation despite the absence of any evidence that such detention deters irregular migration. We also note with concern that, while

criminalizing irregular migration in public discourse and policy, many States indicate no intent of providing migrants with all the guarantees for persons deprived of their liberty that are traditionally embedded in criminal law. This happens also when irregular migration is an administrative offence in domestic law.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides protection against such violations as well as a framework for regulating international migration based on human rights and due process guarantees. In this context, we recall that the Committee on Migrant Workers organized a Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families on 19 September 2011 during its 15th session in Geneva, as the first phase in elaborating a General Comment clarifying the scope of those rights.

More than 20 years ago, States recognized that migrants need specific protection and brought into existence the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As recently stated by the High Commissioner for Human Rights, Ms. Navi Pillay, ‘the Convention does not conjure up more rights or new rights for migrants. It does not reach above general international human rights standards.’ Yet, the Convention is the only human rights treaty with universal aspiration that puts existing human rights standards in the specific context of migration. Today, with 45 States parties to the Convention, such universality is unfortunately still far from being a reality.

Dignity has no nationality. Human rights are everyone’s rights. As we celebrate International Migrants Day today, we call upon States to fully protect and promote the human rights of migrants, and to unblock the political will to ratify and effectively implement the Convention.”

*(\*)* François Crépeau (Canada) was appointed Special Rapporteur on the human rights of migrants in June 2011 by the UN Human Rights Council, for an initial period of three years. As Special Rapporteur, he is independent from any government or organization and serves in his individual capacity. Mr. Crépeau is also Full Professor at the Faculty of Law of McGill University, in Montréal, where he holds the Hans and Tamar Oppenheimer Chair in Public International Law and is scientific director of the Centre for Human Rights and Legal Pluralism. Log on to:

<http://www2.ohchr.org/english/issues/migration/rapporteur/index.htm>

*(\*)* Abdelhamid El Jamri (Morocco) was elected as member of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2004 and is Chairperson of the Committee since 2008. As a treaty body expert, he is independent from any government or organization and serves in his individual capacity. Mr. El Jamri is also an international consultant on

*development project design and an international migration specialist. He is the Director of the French 'Institut Supérieur de Formation et de Développement' and a member of the Economic and Social Council of Morocco. Visit:*  
<http://www2.ohchr.org/english/bodies/cmw/index.htm>

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*Check the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families:*  
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