

# **COMPRENDRE LA COMPLEXITÉ DE LA MIGRATION ET CHANGER NOS MENTALITÉS**

**François Crépeau**

**Director, McGill Centre for Human Rights and Legal Pluralism**

**Hans & Tamar Oppenheimer Professor of Public International Law**

**McGill University**

# WE'RE ALL MIGRANTS

- In our DNA: humankind is a migratory animal species
- Normal response to economic, political, social and environmental challenges
- Proximity or transcontinental: we move all the time
- Migration is not an anomaly: it's the rule, settlement is the exception
- Migration cannot be stopped:
  - Depending on geography, it can be reduced or diverted, for a time
  - Only at the cost of mass human rights violations: Berlin wall
  - Differentials in development and democracy spur migration movements: hope cannot be taken away
  - Push and pull factors drive migration
  - Age of increasing mobility and diversity

# MIGRANTS HAVE RIGHTS

- IHRl: Two rights reserved for citizens
- All other rights are for « **everyone** »
- Not necessarily a right to same government services
- Right to equality: distinctions must be « justified »
- Expulsion and detention: possible within the human rights framework
- Labour standards are the same, whatever the migration status
- The migrant's dignity is not different from ours: solutions need to be individualised
- **Focus here:** Lack of social capital
  - Precarious migration status: undocumented or temporary
  - Not expats or permanent residents

# DEMOCRACIES CAN'T “REPRESENT” FOREIGNERS

- Migrants don't vote, rarely protest publicly and complain little
- Migrants **fear** detection, detention, deportation: they have great agency, but going public is not an option
- Migrants' main goal is to survive and send money home: their strategy is to “move on”
- **Structural limit** of electoral democracies: like the poor in the 19<sup>th</sup> C.
- Electoral systems create no incentive for protecting migrants' rights
- Defending migrants' rights is seen as political “suicide”

# IRRESPONSIBLE POLITICAL DISCOURSES

- Absence of political responsibility for what is said about migrants (except US)
- Anti-immigration discourses have been normalised.
- Nationalist populist discourse based on constructed and uncontradicted **myths, stereotypes, fantasies, threats...**
- Migrants do not increase: unemployment, crime, illnesses, insecurity...
- Always portrayed as “illegal”, never as “worker” or “student” or “child” ...
- “Liquid” language: flows, waves, tides, trickling, streaming, swelling, pouring, seeping, pooling, containing...
- Stereotyped as anonymous threatening mass: no individuality
- As was the case for women, indigenous peoples and LGBT+ persons, the **majority needs to be educated to understand the complexity of the issues**

# UNDERSTANDING THE MIGRATION DYNAMICS

- Push factors:
  - People need to leave: home is worse than treatment elsewhere
  - **Survival migration**: refugees / cannot feed their family
  - “Economic migrants” is deceptive terminology
  - “They don’t need protection”: we all need HR protections.
- Pull factors:
  - **Unrecognised labour needs** at all skills levels: German foundations
  - Huge underground labour markets: agriculture, construction, hospitality, care, fisheries, extraction...
  - Important temporary migrant labour markets
  - There are jobs for migrants: migrants do not go where there are no jobs, no future for their kids

# MIGRANTS' PRECARIOUSNESS IS "CONSTRUCTED"

- Migrants come because there is a labour market (underground, temporary or regular)
- Competitiveness of several economic sectors rests on "**cheap labour**": agriculture, care, construction, extraction, fisheries, hospitality ... Also Gig economy
- Migration policies and labour policies combine in shaping **dangerous employment relationships**, based on precariousness of status and fear of return:
  - Employer can decide of migrant's life course
  - Migrants have little options: they must accept working conditions that residents would refuse
  - Myth: "Migrants do jobs that citizens will not do"
  - Reality: "citizens will not do those jobs *at the conditions that migrants have little choice but to accept.*"

# MIGRANTS' PRECARIOUSNESS IS "CONSTRUCTED"

- Policies against **undocumented migration** create dangerous situations:
  - Knowingly blocking legal migration despite labour needs
  - Spurring undocumented migration is a **strategy to reduce labour costs**
  - "Illegal employers" rarely threatened
  - States co-responsible for deaths at borders (sea, deserts)
  - From "**zero-tolerance**" to "**harm-reduction**" policies:  
Prohibition, "war on drugs", fight against HIV-Aids
- **Temporary migration** policies with precarious status also reduce labour costs:
  - Single-employer temporary status: Kafala, sponsorship
  - Unionisation is discouraged.
  - Standards and inspections absent : domestic workers
  - Protesting is punished: return, blacklisting
  - Exploitation? Trafficking? Slavery?

# HEARING MIGRANTS' "VOICE"

- Contemporary democracies:
  - Representation + HR + Rule of Law
- HR are best defended by rights-holders: women, indigenous peoples, LGBT, persons with disabilities...
- Basic idea: **EMPOWERMENT** of migrants
- Outside political stage, migrants' voice must be carried by:
  - independent institutions: courts and tribunals, NHRIs,
  - civil society: NGOs, churches, unions,
  - international organisations...
  - Public services (labour inspectors, social workers, school directors, health care providers, local police...): "Firewalls"
- Hearing all voices: "All-of-Government" approach
- Cities may help: "Local citizenship": NYC

# AN EMERGING FRAMEWORK FOR GLOBAL MIGRATION GOVERNANCE

- No multilateral tradition + Toxic politics + Structural limit
- No commitment, no formal cooperation, “fora”, Schengen, IOM...
- Exception: regional economic communities freedom of movement (EU, ECOWAS...)
- 15 Regional Consultative Processes (RCPs) and 16 Interregional Fora on Migration (IRFs)
- GFMD: “Good practices and lessons learned”
  - **“Government-led, informal, non-binding, voluntary process”**
- Reticent (United) Nations:
  - OHCHR, UNHCR, ILO, UNICEF, UNWomen, WHO, ...: no leadership until recently
  - ICRMW 90, Cairo 94, SRM mandate 99, CGG 95, ICGM 05...
  - SRSR 06, HLD 06, GFMD 07, GMG 07, HLD 2013...
- 2015: SDGs: Targets 10.7, 8.8...
- 2016: NY Declaration, announcing **Global Compact on Migration**

## 23 « Objectives for safe, orderly and regular migration »:

1. Collect and utilize **accurate and disaggregated data** as a basis for evidence-based policies
2. Minimize the **adverse drivers** and structural factors that compel people to leave their country of origin
3. Provide accurate and timely **information** at all stages of migration
4. Ensure that all migrants have proof of **legal identity** and adequate documentation
5. Enhance availability and flexibility of **pathways for regular migration**
6. Facilitate fair and **ethical recruitment** and safeguard conditions that ensure **decent work**
7. Address and reduce **vulnerabilities** in migration
8. **Save lives** and establish coordinated international efforts on missing migrants
9. Strengthen the transnational response to **smuggling** of migrants
10. Prevent, combat and eradicate **trafficking** in persons in the context of international migration
11. Manage **borders** in an integrated, secure and coordinated manner

12. Strengthen certainty and predictability in **migration procedures** for appropriate screening, assessment and referral
13. Use **migration detention** only as a measure of last resort and work towards alternatives
14. Enhance **consular protection**, assistance and cooperation throughout the migration cycle
15. Provide access to **basic services** for migrants
16. **Empower** migrants and societies to realize full **inclusion** and social cohesion
17. Eliminate all forms of **discrimination** and promote evidence-based public discourse to shape **perceptions** of migration
18. Invest in **skills** development and facilitate mutual recognition of skills, qualifications and competences
19. Create conditions for migrants and diasporas to **fully contribute** to sustainable development in all countries
20. Promote faster, safer and cheaper transfer of **remittances** and foster financial inclusion of migrants
21. Cooperate in facilitating safe and dignified **return and readmission**, as well as sustainable reintegration
22. Establish mechanisms for the **portability** of social security entitlements and earned benefits
23. Strengthen **international cooperation and global partnerships** for safe, orderly and regular migration

## Pluses:

- **Rights guarantees**
- Crisis response
- Development and migration policies go hand in hand
- Information circulation
- Civil status distinct from migration status
- **« Facilitation » of migration mentioned 62 times**
- **« Enhance availability and flexibility of pathways for regular migration »**
- Regularisation of undocumented migrants
- **Migrant children's rights**
- **Right to family unity mentioned 3 times**
- « Global Migration Data Portal »
- **Social services without discrimination: firewalls**
- **Limitation of detention and « working to end the practice of child detention »**
- “Faster, safer and cheaper transfer of remittances”
- Portability of social benefits

## **Minuses:**

- « Global Migration Data Portal » mostly used by Global North countries
- **Privacy rights for migrants?**
- Limits to the idea of reducing migration by creating job opportunities in countries of origin
- Information on « dangers » of migration has limited effect
- ILO barely mentioned
- Gender barely mentioned
- Insistence on efficiency of return mechanisms
- Biometric identifiers
- **Access to justice?**
- **No mention of reducing exploited labour markets in destination countries**
- No discussion of the mobility-development nexus
- **Role of cities barely mentioned**
- No mechanism to measure progress on protecting migrants' rights

# IMAGINING FUTURE MIGRATION POLICIES

- Progressively allowing more migrants to come look for work
  - Develop **visa facilitation and liberalisation** regimes with most countries of origin
  - Create smart visas, with incentives to respect the conditions
  - Connect the visa regime with entry/exit control and security checks
  - Aim at an open and regulated flow back and forth across borders: USA for Mexicans, UK for East Europeans
- Key condition: **reduce underground labour markets**
  - Stronger labour inspections and tougher employer sanctions
  - Sanctioning migrants only drives them deeper underground
  - Bringing migrants out of clandestinity, giving them a status, allowing them to compete on the labour market
  - Help migrants pay taxes : fighting the stereotypes
  - Applying labour law to all workers, without discrimination
  - **Not a fantasy**: this was the rule in the fifties and sixties

# CONCLUSION: INITIATING CONVERSATIONS

Anti-immigration nationalist populism is **rear-guard battle**:

- Baby-boomers fear for their nest egg and they vote
- It will last another decade, at least

Silver linings show a **generational change**:

- Artists
- Business community: mushroom
- Media
- CSOs, INGOs
- Unions
- Courts, tribunals, NHRIs, ombudspersons, healthcare providers
- Technology changes
- Cities: local citizenship + Mayoral Forum on Human Mobility, Migration and Development
- Youth
- Migrants as heroes: agency, resilience, courage, imagination, grit...

The GCM is a **first step**, initiating multiple conversations between actors, conversations which will last a long time