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Presentation Notes: “Recognising the voice of migrants through empowerment”

Roundtable 3.1 – Empowering migrants, their households and communities for improved protection of rights and social development outcomes

I welcome the focus of this roundtable on the empowerment of migrants, which is a great part of what my mandate is all about. I’m pleased with the progress we have accomplished collectively over the past few years: we now have serene and sophisticated conversations about the human rights of migrants.

Except for the right to vote and the right to enter and stay in a country, human rights are not reserved for citizens: they benefit everyone who is in a State’s jurisdiction, without discrimination, whatever their administrative status and circumstances. Distinctions in entitlements, based on nationality or migration status, are possible, but they must be specifically justified. This follows from the non-discrimination principle present in all the human rights treaties, binding most States.

However, migrants have a general fear of being identified, discriminated, arrested, detained and deported, and as a consequence they are reluctant to complain, protest or publicly mobilize against rights violations, preferring most often as a coping strategy to simply “move on”. Migrants are often voiceless, because of fear. This is the case for irregular migrants, but temporary migrant workers also fear loss of their residence status and subsequent deportation.

Specific categories of migrants are in a particularly precarious situation. Children should always be treated as children first and foremost, whatever their status and circumstances. Unfortunately, I’ve too often seen children detained, or deported without a proper best-interest determination procedure by a competent child welfare institution. Migrants in an irregular situation are also often reluctant to seek health care, or to send their children to school, or simply call the police when needed, as they fear detection and deportation. They are rarely empowered to protect their rights.

Migration being the natural state of mankind, we talk often about the push factors, but we rarely discuss a major pull factor: the unrecognized labour needs in destination States. Irregular migrants respond to important underground labour markets that exist within

destination States, at the exploitative wages and work conditions that local employers are offering. This exploitation of a mostly silent workforce is rarely adequately combated, because it conditions the competitiveness of whole economic sectors with low profit margins, such as agriculture, construction, hospitality, mining, or domestic services. Destination States should recognize their own real labour needs, including for low-skilled work, and open up more regular migration channels. Reducing irregular migration will not happen unless we tackle the pull factor, reduce the underground labour markets, fight labour exploitation, recognise migrant workers as workers first and foremost, and empower them to fight for their dignity and rights against abusive employers and recruiters. This would create the conditions for less irregular border crossings, less smuggling of migrants, less loss of life at borders, less labour exploitation, and less migrants' rights violations.

As ILO has alluded to, empowering individuals to fight for their own rights, by giving them access to the social, political and legal tools they need to protect their own dignity, has always been a winning strategy. Nothing has ever better worked: industrial workers, women, minorities, detainees, indigenous peoples, and many other groups had to wrestle their rights out of the hands of the powerful, in order to have their voice heard.

Contrary to those groups, migrants won't have access to the political stage: they don't vote, politicians don't court them, they don't participate in the public debate. We are here facing a structural limit of electoral democracies as we know them: one's rights are overlooked when one has no voice as a citizen.

Migrants therefore need access to recourse to independent institutions without electoral agendas: courts, tribunals, national human rights institutions, ombudspersons, labour inspectors, social workers, healthcare and school officials, etc. States should **INVEST** in all the mechanisms and institutions that can make the voice of the migrants effectively heard without fear:

1. Creating "firewalls" between social or public services, and immigration enforcement: if they are to effectively accomplish their specific mission towards all, the former cannot be made into an auxiliary of the latter. Portugal has a very good example of such a firewall as regard the database of irregular migrant children's access to healthcare and school services, as have many cities around the world in providing IDs to migrants or prohibiting their local police from checking immigration status.

2. Empowering and funding all national human rights institutions which can investigate systemic and individual abuse against anyone, including migrants;
3. Adequately funding legal support programmes to ensure effective access of migrants to courts and tribunals, especially administrative tribunals that deal with labour law and immigration law matters, thus ensuring effective implementation of crucial aspects of migration policies; and
4. Supporting access by migrants to unions and CSOs, but also private services such as bank accounts, which help migrant men and women expressing their agency and fighting abuse and discrimination.
5. Strengthening the rights protection and individual empowerment mechanisms cooperation frameworks governing temporary migrant worker programmes.

The legitimacy of all migration policies depends in part on this investment on the Rule of Law (writ large) made available to migrants to defend their dignity and rights, on how their voice will be heard by appropriate institutions, even against the current opinion of the majority of citizens. A rights-based framework must empower rights-holders to fight their own battles.

Thus supporting migrants in expressing themselves will help changing the public debate about migration, as hearing the voice of women has transformed our vision of the role of women in society. The representation and consequent perception of migrants is extremely important. For example, migrants may be in an irregular situation, but they should never be described as “illegal”. Incorrect terminology contributes to negative discourses on migration, reinforces negative stereotypes against migrants, and legitimates a discourse of the criminalisation of migration, which in turn contributes to further alienation, marginalisation, discrimination and violence against migrants. As we have been doing in the past decades for women or for gays and lesbians for example, our language must shed the traditional stereotyping of migrants. Politicians and media have a major role to play here.

Anti-immigrant discourse dehumanises courageous and resilient individuals behind populist terminologies such as “flocks”, “flows”, “waves”, in which the individual has no place, no name, and no rights, and disappears in a threatening shapeless mass. The whole of the human rights movement is about individualising, about refusing to apply stereotypical collective tags to individuals, about refusing to say that Jews, or women, or blacks, or gays are like this, or

do that, but instead to talk about John or Myriam, who may happen to have various identity factors which may or may not be important to them individually.

Misrepresenting migrants also severely undermines public understanding of the great contribution that migrants, as engines of new experiences, perspectives and ideas, bring to a country's social and economic fabric. State authorities and politicians should stop shooting themselves in the foot for short term electoral gains, and should develop a public discourse that fosters inclusiveness, non-discrimination, recognition of diversity and pluralism as social assets, avoiding criminalising and marginalising terminology. Enlisting the vocal support of the business community and freeing the voice of migrants could help tremendously here. As the Special Representative mentioned yesterday, despite the political difficulty at electoral level, State authorities will need to find the courage and imagination to create the public narrative that will fight off the simplistic assumptions, fantasised threats and exclusionary solutions of the nationalist populist rhetoric on migration.

Providing access to empowerment tools for migrants and shaping the public discourse on migration go hand in hand in ensuring sustainable, fair and legitimate migration policies. The GFMD is the kind of forum where a reasonable policy discourse on migration can be forged by States, with the help of IOs and CSOs, a discourse which will be fact-based and rights-based, and which will yet be electorally and politically convincing, because it will be shared throughout a large spectrum of destination and source countries. I find this very encouraging.

I thank you for your kind attention.