13th EMRTD Session - Participation, inclusion and the right to development of migrants

Intervention by Pia Oberoi, Chief, Right to Development Section, OHCHR

Excellencies, members of the Expert Mechanism, colleagues and friends,

This session is intended among other things to clarify how the right to development applies to all migrants as well as to suggest how operationalizing the right to development can assist States and other stakeholders to improve migration governance at national, bilateral and multilateral levels.

- In the first place, the right to development is an inalienable human right guaranteed to everyone. As rights-holders, all migrants are equally entitled to the right to development, that is – they are entitled to participate in, contribute to and benefit from development.

- The framework further guides that development is a multifaceted process of structural transformation. Under this vision, the outcomes of development are intrinsically linked to meaningful participation, intersectional non-discrimination and the achievement of social justice through the fair distribution of benefits. The draft Covenant recalls the provision of the Universal Declaration of Human Rights that everyone is entitled to a just social and international order.

- In this way, the RTD framework sets out a transformative challenge to current development models that focus primarily on economic growth within the context, it should be recalled, of a global economic order that creates, reproduces and sustains inequalities (both within and between countries) in large part because of a continued and unsustainable reliance on extractive economic models.

- The DRTD and the draft Covenant on RTD can thus be seen as part of a wider effort being undertaken in all regions to align international economic governance with principles of equity, redistribution, individual and collective well-being and sustainability.

- As many of you will know, there is a long history of linking migration with development – based on the idea that migration and development are deeply interconnected and mutually influential. Through spaces such as the Global Forum

for Migration and Development, discussions centered on the idea that increased development would reduce migration pressures, at the same time as migration itself contributed to development, where the latter was conceptualized almost exclusively as economic growth.

- I would argue that this conceptualization has led to structural weaknesses that are deeply embedded in migration governance models. One prominent example exemplifying this weakness is that of temporary labour migration – where within and across regions, millions of migrants move to take up fixed-term, low-wage work in sectors such as agriculture, construction, care work or the service industry. The programmes are often lauded as wins for States and employers as well as for migrant workers who are hailed as "development heroes". In a recent report entitled "We wanted workers, but human beings came" (from the words of the Swiss philosopher Max Frisch) OHCHR has pointed out the structural flaws built into many temporary labour migration programmes. Our report found that these programmes use "temporariness" to entrench decent work deficits and other human rights concerns. For instance, they represent a profound disruption of migrant workers' personal lives through mandatory family separation as well as prohibitions on family formation including bans on pregnancy and marriage. Migrants are unable to apply for permanent residence even when they have lived and worked in the same country for years, they are excluded from public services such as health systems and housing and are compelled to rely on substandard private alternatives provided by employers. Some seasonal schemes interfere with migrants' freedom of religion - domestic workers reported being fired if they prayed or fasted while at work. So in many profound ways, such programmes deny the very humanity of low-wage, temporary migrant workers, casting them as commodified units of labour and inputs of economic productivity that are flexible and – ultimately – replaceable and discardable.

- But as we know, under the right to development lens, development is understood as so much more than an ever-increasing search for aggregate growth. The draft Covenant emphasizes that development should be understood not simply in terms of economic growth indicators, but also as a means of widening people's choices to achieve a more satisfactory and rights-affirming existence. Migrant people must be understood as having the right to such an existence too, including through the fair distribution of the benefits of development.

- The Global Compact for Migration promises to reorient the link between migration and development including through its rootedness in international human rights law and its close links to the 2030 Agenda for Sustainable Development. It is no coincidence that the 2030 Agenda most explicitly refers to migration within the context of Goal 10 on reducing inequalities within and between countries. There, for example, the 2030 Agenda highlights the critical role of families as development actors, committing States to provide children and youth with the nurturing environments needed to realise their rights and capabilities, including through promoting 'cohesive families and communities'. But yet we see that temporary labour migration creates considerable social costs in terms of fractured families and communities which are at least as significant as those related to the more easily measurable economic costs.

- The right to development framework gives us both the language and the tools to challenge this stark picture. It offers a compelling and operational roadmap to improve migration governance through centering economic and social justice, dignity and equity. The guarantee of free, meaningful and active participation within the right to development framework would for instance enable migrants to have a seat at the table when temporary labour programmes are drawn up in bilateral or multilateral forums.

- Further, the principles of international cooperation and solidarity and the duty to cooperate that is embedded in the right to development and recognized within the draft Covenant guarantees that all forms of development cooperation, including cooperation on migration governance, must be normatively anchored in a system of binding rights and obligations. Operationalizing this shared responsibility to create a just and equitable international order which benefits migrants and their families as well as countries of origin, transit and destination would be a truer reflection of the so-called "triple win". The international community has made great strides on cooperation on international migration in recent years, not least through the creation of the International Migration Review Forum (IMRF). Ensuring that the forthcoming IMRF embeds the normative content of the duty to cooperate would enable this forum to ensure that migration cooperation does not militate against the objective of fully realizing the right to development for all.

- As we look ahead to the upcoming IMRF, it is important to avoid overreliance on economic growth as the sole metric of success within the migration-development

nexus. The IMRF offers an opportunity to consolidate progress through a right to development lens, avoiding regression from existing standards, and reaffirming the value of multilateral cooperation at a time of increasingly fragmented approaches to migration governance. Strengthening the accountability and review architecture of the GCM including through putting in place predictable and accountable national follow-up mechanisms, strengthening disaggregated data, and guaranteeing participation of and systematic engagement with stakeholders, can transform the GCM's objectives and guiding principles into a more effective engine for comprehensive and rights-based migration governance.

- To conclude, it is true that migration and development are deeply intertwined, but this relationship is more complex than has been traditionally understood. Through embedding core right to development principles we can reimagine migration - including labour mobility - to ensure that all migrants, whatever the duration of their contract or the work sector of their migration, their country of nationality, gender, race, religion, class or socio-economic status, as well as their family members and host communities can benefit from the "wins" that have long been promised of migration but often denied in reality.

Thank you.