

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL TTO 1/2022
(Please use this reference in your reply)

19 January 2022

Mr. Barman,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 42/22, 45/3, 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Government information we have received concerning allegations of forced returns of Venezuelan migrants, including asylum seekers, without any individualised assessment of their protection needs and risks faced upon return; as well as allegations of pushbacks carried out at sea by the Trinidadian authorities.

Concerns regarding the disappearance of 58 Venezuelan migrants travelling from Venezuela to Trinidad and Tobago between April and June 2019 had been subject to previous communication AL TTO 1/2020, transmitted by Special Procedures' mandate holders on 14 September 2020. We regret that, to date, no reply has been received to this communication.

According to the new information received:

Since 2018, Trinidadian authorities are forcibly returning Venezuelan nationals to the Bolivarian Republic of Venezuela, allegedly in the absence of due examination of their individual circumstances and without individually assessing their protection needs, including an individualised evaluation of the risk of irreparable harm that they might face upon return. Some of these returns have taken place after allegedly pushing back boats carrying Venezuelan migrants attempting to enter the country through the sea route. The maritime route used by Venezuelan migrants to reach Trinidad and Tobago, although short, remains very dangerous: shipwrecks, deaths and disappearances of Venezuelan migrants continue to be reported along this route.

On 18 September 2021, around 160 Venezuelan nationals were reportedly returned from Trinidad and Tobago to Venezuela. According to the sources, amongst the returned individuals, there were registered refugees and asylum seekers. Reportedly, no evaluation of their individual circumstances and protection needs was undertaken before their expulsion. In addition, it is reported that the children of the deported individuals were left behind in Trinidad and Tobago. Similarly, in 2020, Trinidad and Tobago returned hundreds of migrants, including children, to Venezuela on several occasions, reportedly without assessing their protection needs.

Deportations are carried out pursuant to the national 1976 Immigration Act, which penalises irregular entries into the territory of Trinidad and Tobago. Article 9(5) of the Act provides for the immediate deportation of irregular migrants without the right to appeal. Moreover, under Articles 14 and 16 of the Immigration Act, persons who are subject to a deportation or rejection order may be detained at an immigration station or at another location, under the discretion of Trinidadian immigration authorities. On the other hand, it has been reported that the Act does not envisage an asylum procedure.

According to the reports, migrants, including children, who have entered irregularly into the country, are reportedly detained by the Coast Guard and held in a quarantine facility at a military base, where they are allegedly being subjected to dire conditions. Reportedly, lawyers have not been granted in-person access to their clients where they are detained.

Furthermore, Trinidadian authorities are reportedly conducting pushbacks at sea, by intercepting boats carrying Venezuelan migrants and asylum seekers attempting to irregularly enter the country through the sea route. The boats are stopped before they can reach the shore and escorted back to Venezuelan waters, preventing them to disembark in Trinidad and Tobago. Allegedly, Venezuelan nationals on board are forcibly and collectively returned to Venezuela, without conducting an individual assessment of their circumstances and protection needs.

Two of these operations were recorded on 24 December 2021. According to the information received, the Trinidad and Tobago Coast Guard intercepted two vessels before they could reach the Trinidadian shore, during two separate interventions. On board of the two vessels travelled 23 and 20 Venezuelan nationals, respectively. All 43 individuals found on board of the two vessels were reportedly detained by the Coast Guard and were returned to Venezuela three days later, on 27 December 2021, allegedly without conducting an individual assessment of their circumstances and an examination of their protection needs prior to their forced return.

Without prejudging the accuracy of the information received, we are deeply concerned about the alleged forced returns and collective expulsions of Venezuelan migrants without any individual assessment of their individual circumstances and protection needs under international human rights and refugee law. We are particularly concerned by the reports about registered asylum seekers and refugees being forcibly returned to Venezuela, where they may be at risk of irreparable harm, in violation of the principle of non-refoulement. We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

We express our most grave concern regarding the pushback operations allegedly conducted by Trinidadian authorities at sea, particularly in view of the continued reports of shipwrecks, deaths and disappearances along the maritime route between the Bolivarian Republic of Venezuela and Trinidad and Tobago. We would like to stress that pushback practices greatly increase the chance of a maritime disaster and therefore contribute to endanger the safety and lives of migrants and asylum

seekers. In this regard, we wish to highlight that under international human rights law, the absolute right to life entails both a positive obligation on the State to protect the right to life and security of the person and a negative obligation not to engage in acts that would jeopardise the enjoyment of that right.

We would also like to express our concern regarding the alleged detention of Venezuelan migrants, and particularly of children. In this regard, we would like to point out that the detention of migrants should always constitute an exceptional measure of last resort, compatible with the principles of necessity and proportionality based on the individual circumstances of each case, and should not be based on their migration status. If it is not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the Universal Declaration of Human Rights and article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 37(b) of the Convention on the Rights of the Child. On the other hand, we wish to emphasise that the detention of any child for reasons related to their migration status, that of their parents or legal guardians, never responds to the best interests of the child and it always constitutes a violation of the rights of the child under international human rights standards. In addition, we stress our deep concern regarding the well-being of the forcibly separated children that were allegedly left behind in Trinidad and Tobago after the deportation of their family members, and wish to highlight that families should never be separated unless such measure is necessary to ensure the best interests of the child.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken by your Government to protect the human rights of migrants at international borders, regardless of their migration status, including to ensure their access to relevant procedures for persons in need of protection under international human rights and refugee laws. These also include actions taken or to be taken by your Government to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions. In particular, please explain the measures taken to assess whether there are substantial grounds for believing that an individual would be in danger of being subjected to enforced disappearance or torture and inhuman or degrading treatment.
3. Please provide information regarding any alternatives to deprivation of liberty or less restrictive measures available to migrants, including persons who entered the territory of Trinidad and Tobago irregularly, in order to ensure that administrative detention for immigration reasons

is used only as a measure of last resort and for the shortest possible time.

4. Please provide information on measures taken or to be taken by your Government towards ending immigration detention of children and their families, as well as efforts made to provide effective protection, adequate care and non-custodial reception for migrant children.
5. Please provide information on the measures taken by your Government to protect the human rights of migrant children, and with respect to families that have been separated, particularly in terms of prevention and protection measures to avoid family separation and effective access to mechanisms of family reunification.
6. Please provide information on your Government's current search and rescue capacity at sea. Please also include detailed information on any guidelines and/or protocols adopted by your Government for the interception of migrant boats in the territorial waters of Trinidad and Tobago, and how these instruments are in compliance with international obligations. Please provide information on the measures taken by your Government vis-à-vis reported shipwrecks and disappearance of migrants at sea, to search and locate the victims and, in the event of their death, to identify their remains and return them to their families.

This communication and any response received from your Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government to clarify the issue/s in question.

Please accept, Mr. Barman, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Elina Steinerte
Chair-Rapporteur of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Government to Article 3 of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”, and Articles 6 (1), 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Trinidad and Tobago on 21 December 1978, which guarantees the inherent right to life of every individual, the prohibition of torture, as well as the right to liberty and security of the person. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10). We further refer to Human Rights Committee, General Comment 36, which states “states parties are also required to respect and protect the lives of all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea.

Furthermore, we wish to refer to Article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution". We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary or collective expulsions.

The principle of non-refoulement is codified in the 1951 Refugee Convention, to which your Government is party since 10 November 2000. The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. Non-refoulement prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations, in the place to which they are to be transferred or removed. In this regard, we would like to draw the attention of your Government to General Comment No. 31 of the Human Rights Committee, which specifies that State obligations under Article 2 of the International Covenant on Civil and Political Rights entail “an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm.” The principle of non-refoulement under international human rights law is characterised by its absolute nature without any exception, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness or migration status.

Collective expulsions, on the other hand, are prohibited as a principle of general international law. In this regard, we would like to draw the attention of your Government to paragraph 10 of General Comment No. 15 (1986) of the Human Rights Committee, where the Committee stressed that article 13 of the International Covenant on Civil and Political Rights “would not be satisfied with laws or decisions providing for collective or mass expulsions”. The Committee on the Elimination of

Racial Discrimination has also recommended States to “ensure that non-citizens are not subject to collective expulsion”.

We draw the attention of your Government to OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders. In particular guideline 9, which states that returns or removals should not violate the principle of non-refoulement and/or the prohibition of collective expulsion. In the case of forced returns, the Guideline calls on States to ensure that return procedures are not carried out at all costs, but are interrupted where the human rights of the migrant are compromised, and that migrants whose rights are violated during return processes can file complaints.

We would also like to draw your attention to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that migrants arriving at international borders, regardless of how they have travelled, should have access to individualised, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights protection needs, including access to asylum, in an age-sensitive and gender-responsive manner. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

Furthermore, the Special Rapporteur recalls that States are required to take all reasonable precautionary steps to protect life and prevent excessive violence, and have committed to cooperate internationally to save lives and prevent migrant deaths and injuries, in accordance with international law. In this regard, delays in searching for and rescuing migrants in distress on land and at sea, as well as in designating safe ports for disembarkation, may amount to torture or ill-treatment and undermine the right to life (para. 44). Pushbacks, when carried out violently, or effectively resulting in dire conditions for migrants, may also amount to torture or ill-treatment and violations of the right to life. States cannot point to exceptional or disproportionate operational challenges (e.g. the size of migratory movements) to justify such actions (paras. 44-46). Pushbacks greatly increase the chance of a maritime disaster resulting in loss of life, and abandoning migrants adrift in unseaworthy rafts are incompatible with search and rescue obligations and may also result in other human rights violations, including refoulement (para.52).

Furthermore, we wish to draw your attention to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the unlawful death of refugees and migrants, which stresses that “push-back” measures, in addition to violating the principle of “non-refoulement,” may also amount to excessive use of force whenever officials place refugees or migrants intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment (A/72/335).

We also refer to the report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2). The report highlights how the increasingly precarious movements of migrants undertaking long and perilous journeys, together with the increasingly rigid migratory policies of States, focused on deterrence, have created a situation that exposes migrants to heightened risks of becoming victims of human rights violations, including enforced disappearances. The report also refers to worrying cases in which migrants have disappeared as an involuntary but direct

consequence of the actions of the State, for instance in the case of pushbacks, both at land or at sea.

In this respect, we also draw your Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, article 8 of the Declaration, which establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child and States must also consider the particular needs and vulnerabilities of each child, which may give rise to irreparable harm in the country of return. The best interests of the child should be the paramount consideration in decisions. Where return is deemed not to be in the child's best interests, families should be kept together in the country of residence. In the case of families with children, the government authorities responsible for processing returns should ensure that children are not separated from immediate family members in the return process (A/ HRC/38/41, para. 44). We wish to stress that families should never be separated unless the separation is necessary to ensure the best interests of the child.

As per allegations of detention of migrants, we would like to highlight that, according to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. In this respect, we would like to recall the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (A/HRC/39/45, annex), where the Working Group stressed that in the context of migration proceedings, "alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure". We also recall that the right to challenge the legality of detention applies in the migration context (as per the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37)) and reiterate that "detaining children because of their parents' migration status will always violate the principle of the best interests of the child and constitutes a violation of the rights of the child" (A/HRC/39/45, annex, at paras. 28 and 40, respectively). Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

We would also like to recall article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Furthermore, we would like to draw the attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988).

In relation to the reports concerning the detention of children, we wish to emphasise that the detention of any child for reasons related to their, their parents' or their legal guardians' immigration status never responds to the best interests of the child and always constitutes a violation of the rights of the child in accordance with the international human rights standards. We also recall that all human rights norms and standards are applicable to migrant children, being of particular relevance the provisions established in the Convention on the Rights of the Child, ratified by your Government on 31 January 1992. We refer your Government to the report of the Special Rapporteur on the human rights of migrants on "Ending immigration detention of children and providing adequate care and reception for them" (A/75/183), where the Special Rapporteur provides a set of recommendations to Member States in this regard.

In connection with the criminalisation of the irregular entry of migrants, we would like to refer the attention of your Government to the report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea, which highlights that States have an obligation to respect, protect and fulfil the human rights of everyone on their territory or within their jurisdiction or effective control, irrespective of migration status and without discrimination of any kind (para. 39, A/HRC/47/30).

With regards to search and rescue operations, we would also like to refer to principle 4 of OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations, according to which States should protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance. This includes, among others, to establish, operate and maintain adequate and effective services for search and rescue at sea regardless of presumed nationality or legal status of migrants who are in distress at sea or the circumstances in which they are found; to make every effort to protect migrants' right to life, wherever they are at risk on water or on land; and to avoid acts and inaction that are likely or expected to cause the unnatural or premature death of migrants, or deny them a dignified existence.

We also wish to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objective 8, which refers to the commitment of States to review the impacts on migration-related policies and laws to ensure that these do not raise or create the risk of migrants going missing, including by identifying dangerous transit routes used by migrants, by working with other States, relevant stakeholders and international organisations to identify contextual risks and establishing mechanisms for preventing and responding to such situations.

In this respect, we refer again to the report by the Working Group on Enforced or Involuntary Disappearances, on enforced disappearances in the context of migration, which highlights that States should take all necessary measures to search for and locate disappeared migrants by using all means at their disposal, including forensic investigative resources, and incorporate ante-mortem information in a centralized database (A/HRC/36/39/Add.2, para. 89.a).

Finally, we would like to recall the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration

status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".