

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extreme poverty and human rights; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

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14 April 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on the human rights of migrants; Special Rapporteur on extreme poverty and human rights; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/36, 45/24, 43/14, 41/15, 43/6, 44/13, 41/18, 44/4, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of human rights violations against migrants, refugees and asylum seekers. The information we have received raises concerns that discriminatory policies and practices against migrants, refugees and asylum seekers violate your Government's domestic law and its obligations under international law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), and the international standards contained in the Durban Declaration and Programme of Action (DDPA). We are alarmed by reports that systemic racial discrimination and racist violence against migrants, refugees and asylum seekers have been exacerbated in recent years, with this regression accelerated by the public and private response to the COVID-19 pandemic.

According to the information received:

Under Brazilian law, migrants and recognized refugees have equal rights to legal protections and services offered to Brazilian citizens. Despite this important reform and other progress, migrants, refugees and asylum seekers

continue to face systemic discrimination and barriers to the full realization of their human rights, particularly during the COVID-19 pandemic.

Xenophobia against African Migrants, Refugees and Asylum Seekers

There are more than 50,000 migrants, refugees and asylum seekers from Africa in Brazil, including nationals from Angola, Guinea-Bissau, Nigeria, Democratic Republic of the Congo and Senegal. African asylum seekers face difficulties reaching Brazil. Upon arrival, some are reportedly confined in Brazilian airports for an indeterminate amount of time, even if they have all the documentation and other requirements necessary for staying in the country. After confinement, some asylum seekers are sent back to their country of origin, without individualized assessment of risks of refoulement by officials.

Moreover, some African and Haitian migrants in Brazil have become victims of physical and symbolic violence in the country. In the last 20 years, there have been multiple manifestations of racism and xenophobia, including the killings and arbitrary arrests of Africans and Haitians, the arson of university housing which supports African migrants, and public expressions of racist and xenophobic sentiments, including hate speech and graffiti against the presence of African migrants in Brazilian cities.

Border Closures

Limits on migration to Brazil were drastically escalated with the COVID-19 pandemic with multiple ordinances being issued to restrict border access. According to the information received the ordinances mandating border restrictions did not include provisions to ensure that the principle of non-refoulement was upheld. In addition, the restrictions are reported to disproportionately impact certain individuals on the basis of nationality, including those from Venezuela. Ordinance No. 651/2021 was issued due to the COVID-19 pandemic, imposed entry restrictions at the border with Venezuela similar to those which were included in ordinances issued in 2020. These restrictions negatively affect Venezuelan migrants and asylum seekers. The Government argues that the closure of the border with Venezuela is for public health reasons. However, entry restrictions were made disproportionately stricter for people coming from Venezuela. As a consequence, Venezuelan migrants resorted to unsafe routes, the use of coyotes (smugglers) and other intermediaries, raising the risk that they would suffer various types of violence, such as rape, extortion, forced recruitment and exploitation. As such, the number of undocumented migrants in a situation of extreme vulnerability reportedly increased.

Decrees later issued between 24 April and 12 November 2020, although placing restrictions on all nationalities, discriminated against people coming from Venezuela by failing to extend exceptions available to other nationals. This prevented entry of Venezuelans, even though the Brazilian Government recognized that there is a humanitarian crisis and serious and widespread human rights violations in Venezuela. The Government's decrees laid out several major consequences for non-compliance with their orders. These consequences include the suspension of asylum requests, immediate deportation or repatriation, and administrative, civil and criminal liability of

migrants.

In addition, collective expulsions of migrants at Brazil's border have been reported. In one case, in August 2020, more than a dozen migrants of different nationalities, though mainly Venezuelans, were immediately deported at the border with Peru near the Brazilian town of Assis Brasil, in the state of Acre. Their deportations took place in denial of their right to a defense or due legal process. This group was moved to a bridge connecting Peru and Brazil. Without permission to enter either country, they were left in a situation of extreme vulnerability on the border.

Evictions Targeting Migrant Communities

On 27 April 2020, the Metropolitan Civil Guard carried out a forced eviction of more than 100 Venezuelan migrants without a court order from a settlement called Clamor do Rio, on the banks of the Branco River. The police used a backhoe to demolish the makeshift accommodations. The Government justified this demolition and displacement on the basis of a need to prevent gatherings during the pandemic and the land being an area subject to environmental protection. No plans were made to provide alternative or even temporary shelter for the families, which included children and people in COVID-19 high-risk groups. Some of these migrants formed another settlement called "Clamor do Rio 2" in the forest, where they lived in appalling sanitary conditions, including with no access to water and sanitation, as well as in fear of further action by the police. Civil society filed a public civil action on 30 April 2020 against the removal and requested that the Government provide shelter, adequate food, hygiene items, medical care and emergency income support for the evicted families. It also requested a moratorium on any other removals, evictions or land repossession during the pandemic.

On 3 June 2020, Brazilian police carried out a forced eviction at Morro do Pullman in São Paulo. The settlement was home to many vulnerable individuals, including older people, children and migrants. The buildings were partially demolished and their residents displaced at the height of the pandemic without being provided other living arrangements. The residents claim that evictions took place without full regard for due process requirements, such as adequate notice and prior and meaningful consultation with those affected.

On 18 August 2020, the municipal government of Boa Vista carried out a forced eviction without a court order and without a plan to provide subsequent shelter, at a settlement named Beira Rio, which is reported to have impacted migrant families. The municipal government, which claimed that the area was a permanent preservation area, did not even inform the civil society actors which had been monitoring the families and had included them in a resettlement plan.

Social Impact on Migrants, Refugees and Asylum Seekers

In the midst of the COVID-19 pandemic, several legal obstacles prevent migrants, refugees and asylum seekers from accessing basic human rights,

such as education, housing, emergency social support and other social rights. The major obstacle is that migrants, including refugees and asylum seekers are often required to present documentation to access these services, and government documentation is increasingly inaccessible to them due to their migration status. When social support programmes do not provide the required resources to some migrants, they have difficulty contesting the process through digital platforms or accessing further documentation to gain social support due to their migration status. As such, many migrants have still not been able to access federal emergency support benefits due to the barriers encountered at the various stages of the process. This occurs despite legal recognition under domestic law that migration status should not prevent access to social rights, in this case, the right to the emergency income support. The lack of emergency support has led to other alleged systematic violations of the human rights of migrants during the pandemic, including an increase in arbitrary evictions, malnutrition, resettlement to poor quality housing and a rise in homelessness.

Migrants in detention often face discrimination in the criminal justice system. Civil society groups in some urban areas report that migrants are kept in closed detention disproportionately longer than Brazilian citizens. While in prison, migrants, particularly migrant women, face significant challenges in accessing health care and are extremely vulnerable to human trafficking in these institutions.

Discrimination against refugees, asylum seekers and migrants has been deepened by the Brazilian economic, political and public health response to COVID-19. This has been worsened by a lack of coordination between the Government institutions in charge of monitoring migrant issues and the increasing militarization of migration enforcement.

Reportedly, there have also been widespread acts of discrimination by private actors. In Northern Brazil, mainly the Roraima and Amazonas states, there have been large-scale manifestations of xenophobia perpetuated by local community members. This includes insults, bullying, threats, public hate speech, physical violence, including homicide. Homeless refugees and pregnant migrant women can have a heightened vulnerability to these forms of xenophobia and violence. The xenophobic environment means that migrants, refugees and asylum seekers do not feel safe seeking support from hospitals, schools and other public institutions.

The information also indicates that some migrants and refugees face intersectional discrimination on the grounds of race and gender. The southern region of Brazil has experienced racism and xenophobia through public hostility against Haitians, the Senegalese and other Black migrants. Transgender people also face major issues in migrating to Brazil and integrating themselves into Brazilian society. They are often unable to access the formal labor market and must turn to other dangerous means of survival. Many migrant women are engaged in sex work for survival, and there are significant trafficking networks in Brazil that prey on both transgender and cisgender women. In addition, there are reports of migrant women, including those who have left Venezuela due to a lack of maternal healthcare, facing additionally vulnerability due to being pregnant. Meanwhile, many of those

employed in the formal job market have had their salaries cut. Considering that many migrants and refugees have relatives in their countries of origin who also depend on this same income, the demand by civil society organizations for food staples and subsistence items increased markedly during the period of the pandemic.

Migrants, refugees and asylum seekers are protected by Brazilian labour laws, but these groups are particularly vulnerable to exploitation by employers. Many migrants do not know their rights, and if they do know their rights, they are unable to pursue these claims in courts due to lack of resources and support. During the COVID-19 economic crisis, many migrants lost their jobs in the formal economy, in many cases compounding existing forms of discrimination and social exclusion.

As the COVID-19 pandemic spread in Brazil, migrants, refugees and asylum seekers became more vulnerable to the disease. These groups have experienced increased obstacles during the pandemic in the form of structural racial and social inequalities.

Many migrants who already faced difficulties completing their immigration regularization procedures now find the process further delayed due to the COVID-19 pandemic. Moreover, the border closures, discussed above, have created lasting challenges for migrants and asylum seekers, despite the subsequent easing of relevant measures. Although immigration regularization deadlines have been extended and migrants are not expected to be fined or notified for being in the country irregularly during the pandemic, civil society organizations have raised concerns over the lack of transparency over migration policies, whether expired documents from countries of origin will be accepted for immigration purposes, limited communication about ongoing processes and procedures and the time frame for renewing documents.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned that migrants, refugees and asylum seekers have faced structural discrimination which have been exacerbated by the COVID-19 pandemic. We urge your Excellency's Government to ensure that the aforementioned groups are granted the legal protections and social supports that allow them to fully exercise their civil, political, economic, social and cultural rights as recognized under international law.

We recall the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992. The ICCPR enshrines the non-discrimination principle in articles 2 and 26. In addition, we are deeply alarmed by these reports of forced evictions and displacement of vulnerable migrants, refugees and asylum seekers, among others, whose settlements have been the target of government evictions and demolitions without adequate alternatives for housing the affected populations. We observe that the Committee on Economic, Social and Cultural Rights considers article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 17 of the ICCPR to jointly prohibit State-sponsored forced evictions. In particular, the Committee's General Comment No. 7 calls on States parties to be particularly cognizant of "[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups [who] all suffer disproportionately from the practice of forced eviction."

Additionally, whilst recognizing State sovereignty over access to their territory and the easing of border restrictions introduced after the onset of the COVID-19 pandemic, we are deeply alarmed by reports of collective expulsions, arbitrary deportations and displacement and discrimination against migrants, refugees and asylum seekers. Not only does such treatment violate the ICCPR's prohibition of arbitrary deportation, but the allegations above, if true, could constitute a violation of the principle of non-refoulement as it is enshrined in the 1951 Convention on the Status of Refugees (ratified by Brazil on 16 November 1960), the 1967 Protocol on the Status of Refugee (acceded to on 7 April 1972) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (ratified on 28 September 1989). These sources of international law lay down the fundamental norm of non-refoulement, which requires that no person be expelled to a country where they will face persecution or torture. The alleged instances of arbitrary and collective deportation would constitute clear violations of this non-refoulement principle. Article 13 of the International Covenant on Civil and Political Rights lays out that individuals can only be expelled from a State party's territory in pursuance of a decision reached in accordance with the law and that they must be afforded the opportunity to submit the reasons against their expulsion and to have their case reviewed by the competent authority.

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, including ensuring their access to legal aid and their effective access to asylum and other international protection procedures, in accordance with Brazil's obligations under international human rights law. 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;
3. Please provide information on the legal basis and grounds for the evictions carried out: on 27 April 2020 at Clamor do Rio settlement; on 3 June 2020 at Morro do Pullman in Sao Paulo; and on 18 August 2020 at Beira Rio settlement in Boa Vista; keeping in mind Brazil's international human rights obligations, including under Article 11 of the International Covenant on Economic, Social and Cultural Rights and Article 17 of the International Covenant on Civil and Political Rights.

4. In relation to the alleged evictions, please also provide: any information about the measures taken to ensure adequate notice and consultation within affected individuals; the status and outcomes of any legal challenges to alleged evictions; material or other assistance provided to those evicted by Government or other competent authorities, and the current location and material situation of those displaced by these evictions.
5. Please indicate what steps the Government is taking to prevent future forced evictions of migrants, asylum seekers and refugees, and to ensure that, where evictions are considered to be justified, they are only carried out when all feasible alternatives have been explored in consultation with the affected persons, that procedural protections are applied, and in any case that the evictions do not result in homelessness or vulnerability to the violation of other human rights;
6. Please provide information on what measures the Government is taking to provide alternate housing arrangements and other humanitarian measures to reduce the risk of displacement and mitigate its impact where necessary;
7. Please indicate what measures are being taken to prevent incidents of sexual and other manifestations of violence against migrant women, ensure the availability of effective reporting and assistance mechanisms for victims of violence, as well as the overall access of migrant pregnant women to adequate sexual and reproductive health services.
8. Please indicate the measures implemented to support migrants, refugees and asylum seekers during the COVID-19 pandemic and protect these groups' access to the civil, political, economic, social and cultural rights which they are guaranteed under international law.

This communication and any response received from your Excellency's 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 Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, We refer your Government to **article 13 of the International Covenant on Civil and Political Rights (ICCPR) which your Excellency's Government acceded to on 24 January 1992**, which provides that “[a]n alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” 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). In addition, the Human Rights Committee has reaffirmed this principle in its **General Comment No. 15**, paragraphs 9 and 10.

We would also like to refer to paragraph 9 of **General Comment No. 20 of the Human Rights Committee**, which states that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.” Your Government may also consider the thematic report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/25/60, ¶ 46), which states that the *non-refoulement* obligation is a “specific manifestation of a more general principle that States must ensure that their actions do not lead to a risk of torture anywhere in the world.”

The right to adequate housing is an aspect of the right to an adequate standard of living, recognized by Article 11 of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, acceded to by Brazil on 24 January 1992. These rights apply even in times of public emergency. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 stated that “forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”. Further, in its **General Comment No. 7 on the right to adequate housing: forced evictions**, the Committee recognizes that under the ICESCR the right to adequate housing interacts with the ICCPR’s prohibition of arbitrary or unlawful interference with one’s home. “[A]rticle 17.1 of the International Covenant on Civil and Political Rights ... complements the right not to be forcefully evicted without adequate protection ... That provision recognizes, inter alia, the right to be protected against ‘arbitrary or unlawful interference’ with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.” Furthermore, “[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of

statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.”

The Guiding Principles on Extreme Poverty and Human Rights, which were adopted by consensus by the Human Rights Council on 27 September 2012, in resolution 21/11, recommend, in particular, that States "adopt laws that protect all individuals, groups and communities, including those living in poverty, against forced evictions by State and non-State actors. This should include preventive measures to avoid and/or eliminate the underlying causes of forced evictions, such as land and property speculation" (para. 80 (b)). The Guiding Principles on Extreme Poverty and Human Rights also recommend that States “ensure that persons living in poverty are equal before and under the law and are entitled, without discrimination, to the equal protection and benefit of the law. States must repeal or modify laws and regulations that are biased against the rights, interests and livelihoods of persons living in poverty. All forms of legislative or administrative discrimination, direct or indirect, on grounds of economic situation or other grounds associated with poverty must be identified and eliminated”.

In this regard, we would also draw the attention of your Excellency’s Government to the Special Rapporteur on the right to adequate housing 2020 report to the General Assembly on Covid-19 and the right to adequate housing, in which he on States to enforce a moratorium on evictions and foreclosures and on eviction proceedings against everyone, including non-nationals resident in a country ([A/75/148](#), para. 67 (b)). Reference is also made to the report (A/65/261) of the previous Special Rapporteur on adequate housing, which found that migrants faced discrimination in gaining access to both private and public housing, including increased vulnerability to violence, forced evictions and segregation.

We remind your Government of its obligations under the **1951 Convention Relating to the Status of Refugees**, which Brazil ratified on 16 November 1960, and the **1967 Protocol Relating to the Status of Refugees**, which Brazil acceded to on 7 April 1972. Under article 1(A)(2) of the Refugee Convention, a refugee is any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” States parties to the Refugee Convention and Protocol have accepted binding legal commitments which limit their power to forcefully expel individuals who meet the refugee definition. We direct your Government to article 33(1): “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This provision is non-derogable, and as such, the sole exception arises when there are “reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime,

constitutes a danger to the community of that country” (the “national security exception” of article 33(2)).

Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in article 3 of the **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, ratified by Brazil on 28 September 1989. This absolute prohibition against *refoulement* is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under the 1951 Refugee Convention or domestic law. Accordingly, *non-refoulement* under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

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).

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".

We would like to recall that the **1998 Guiding Principles on Internal Displacement**, which underline that every human being shall have the right to be protected against arbitrary displacement, including displacement aimed at altering the

ethnic, religious, or racial composition of an affected population (principle 6). All feasible alternatives to displacement should be explored, measures should be taken to minimize displacement and its adverse effects (principle 7(1)), displaced persons should be provided with proper accommodation, and displacement should be carried out in adequate conditions of safety, nutrition, health and hygiene (principle 7(2)). When displacement occurs outside the context of emergency states related to armed conflict and disasters, it should follow a specific decision must be taken by a State authority empowered by law (principle 7(3a)), the displaced should be provided with full information on the reasons and procedures for their displacement (principle 7(3b)), the free and informed consent of those to be displaced should be sought (principle 7(3c)), and the right to an effective remedy, including review by appropriate judicial authorities, should be respected (principle 7(3f)).

The Guiding Principles further stipulate that displacement should not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected (principle 8). Internally displaced persons should also be protected against murder, violent threats and incitement to violence towards them, and direct or acts of violence (principle 10). All internally displaced persons have the right to an adequate standard of living, including access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation (principle 18). Internally displaced persons have the right to recognition as people before the law, and as such should be provided with all documents necessary for the enjoyment and exercise of their legal rights (principle 20).

We would like to direct your Government's attention to the "**Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response**", published by the United Nations High Commissioner for Refugees on 16 March 2020. UNHCR emphasizes that "imposing a blanket measure to preclude the admission of refugees or asylum-seekers, or of those of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against *refoulement*, would be discriminatory and would not meet international standards, in particular as linked to the principle of *non-refoulement*. In case health risks are identified in the case of individual or a group of refugees or asylum-seekers, other measures could be taken, such as testing and/or quarantine, which would enable authorities to manage the arrival of asylum-seekers in a safe manner, while respecting the principle of *non-refoulement*. Denial of access to territory without safeguards to protect against *refoulement* cannot be justified on the grounds of any health risk." Further, the agency reminds States that "measures to protect public health may affect persons seeking international protection. While such measures may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in *refoulement*."

We would like to direct your Government to **General Recommendation No. 30 relating to discrimination against non-citizens**, in which the Committee on the Elimination of Racial Discrimination recommends that States:

- "Ensure that legislative guarantees against racial discrimination apply to noncitizens regardless of their immigration status and that the implementation of legislation does not have a discriminatory effect on non-citizens";

- “Ensure that non-citizens enjoy equal protection and recognition before the law”;
- “Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies”; and
- “Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account”.

Finally, we would like to recall paragraph 34 of the **Durban Programme of Action**, which urges States “to comply with their obligations under international human rights, refugee and humanitarian law relating to refugees, asylum-seekers and displaced persons, and urges the international community to provide them with protection and assistance in an equitable manner and with due regard to their needs in different parts of the world, in keeping with principles of international solidarity, burden-sharing and international cooperation, to share responsibilities[.]”

For further detail on the intersection of the international equality framework and immigration, we encourage your Government to consult the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance concerning “racial discrimination in the context of immigration” (A/HRC/38/52).

Your Excellency’s Government acceded to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 1 February 1984. CEDAW General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration highlights that refugee women and girls are highly vulnerable to trafficking and are in need of international protection, especially against refoulement. In particular we would also like to recall recommendations regarding victim identification and victims’ assistance and protection, as stated in paragraph 38 on the positive obligations on States to identify victims of trafficking, and paragraph 39 to 41 on the obligations of States to provide victims with high-quality support services with immediate availability, which must be inclusive and accessible, include access to information on their rights, the medical, psychological, social and legal services available to them and how to acquire access to them, as well as to safe and appropriate accommodations. Furthermore, we would like to bring to your Excellency’s attention para 14 of the CEDAW General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, where [...] [t]he Committee recognizes that displacement arising from armed conflict, gender-related persecution and other serious human rights violations that affect women compounds existing challenges to the elimination of discrimination against women. It also recognizes the persistence of other forms of exploitation concomitant with displacement, such as trafficking for purposes of sexual or labour exploitation, slavery and servitude. The Committee therefore reiterates the obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving

States and/or voluntary repatriation to their State of origin. The Committee is therefore of the view that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including 8 serious forms of gender-based persecution or gender-based violence. What amounts to serious forms of discrimination against women, including gender-based violence, will depend on the circumstances of each case (CEDAW/C/GC/32, para 23). The Committee states further that [g]ender sensitivity should be reflected in reception arrangements, taking into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture or ill-treatment and of other particularly vulnerable groups of women and girls. Reception arrangements should also allow for the unity of the family as present within the territory, in particular in the context of reception centres (ibid, para 34). As a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained. Moreover, [a]s a general rule, detention of pregnant women and nursing mothers, who both have special needs, should be avoided, while children should not be detained with their mothers unless doing so is the only means of maintaining family unity and is determined to be in the best interest of the child (CEDAW/C/GC/32, para. 49).

In its recent report on women's and girl's sexual and reproductive health rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girls expressed its deep concerns about migrant, refugee and internally displaced women and girls often arrive carrying the traumas of violence, persecution, conflict and poverty, and that in some countries migrant women have been put in detention centres, denied basic reproductive health goods and services and subjected to non-consensual and medically unnecessary reproductive health procedures. The Working Group recommended to develop policies and commit additional resources to address the multiple and intersecting forms of discrimination that contribute to reproductive health disparities and the specific risks faced by migrant, refugee and displaced women and girls, among others. It also recommended to build participatory processes that are empowering, inclusive, accessible and non-discriminatory, with special attention given to women and girls who have been disproportionately affected by crisis, including in disenfranchised and marginalized populations, such as migrants, refugees and internally displaced persons.

The Working Group stated in its report on Women's human rights in the changing world of work (A/HRC/44/51) that for migrant domestic and care workers, gender-based discrimination is compounded by further discrimination, among other things, based on their legal status, ethnicity, race, class or caste identities. Migrant domestic and care workers are also vulnerable to human rights violations in their country of origin, for example exploitation by brokers. In this regard, the Working Group recommended to remove all discrimination against migrant women workers, including in migration policies and laws, including employment laws, and introduce legal safeguards against their exploitation.

In its thematic report on women deprived of liberty (A/HRC/41/33), the Working Group noted that the deprivation of liberty is deeply gendered and that women who experience intersectional forms of discrimination such as migrant women are more vulnerable to discriminatory rules and practices. The Working Group recommended the Member States to ensure that measures addressing conflict, crisis, terrorism and national security incorporate a women's human rights focus and do not

instrumentalize women's deprivation of liberty for the purposes of pursuing government aim.

We also wish to recall Your Excellency's Government obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified in 2004 to promptly identify and provide assistance to victims of trafficking without discrimination. In particular the Special Rapporteur on trafficking in persons, especially women and children had already raised her concern about the lack of identification of victims in Brazil noting that the lack of coordination among the relevant administrative authorities, hinders the identification and assistance of unaccompanied and separated children at risk of sexual or labour exploitation, an increasing concern in the region". (A/HRC/38/45, para. 27).

We wish to draw attention to the obligation of non-refoulement, arising under international law, and its application to victims of trafficking and persons at risk of trafficking, as specified in Article 14(1) of the Palermo Protocol, and highlighted by the UN Committee on the Elimination of All Forms of Discrimination against Women, in General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration which reminds States to: "Ensure that all governance measures taken at international borders, including those aimed at addressing irregular migration and combating transnational organized crime, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions." (para.85)

We remind your Excellency's Government of the specific obligations of non-refoulement and protection of child at risk of trafficking, without discrimination, arising under Articles 6(1) and 37 of the UN Convention on the Rights of the Child and stated in Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (paras. 45-47).

We wish to draw Your Excellency's Government attention as well to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, in particular to the implementation of the principle of non-punishment (Principle 7), the Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons which provide that States have an obligation to protect and assist migrants who are victims of trafficking, taking into account the gender perspective, the best interests of the child and the non-criminalization of migrants who are victims of the crime of trafficking in persons, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (arts. 2, 3 and 7 (g)), the American Convention on Human Rights (article 6) and the American Declaration of the Rights and Duties of Man.

The Special Rapporteur on Trafficking in Persons, especially women and children has highlighted that, "Detention, forced return, [...] and the imposition of sanctions for immigration offences or engagement in sex work or prostitution violate both the principle of non-punishment and the principle of non-discrimination." ((A/HRC/47/34, para.26)

In the context of the application of non punishment the Special Rapporteur on trafficking in persons reiterated that “Early identification and prompt assessment by trained and qualified individuals is essential to ensuring the effective implementation of States’ obligations of non-punishment (...) The obligation of non-discrimination in international human rights law is critical to the principle of non-punishment and to its application across all anti-trafficking measures, including in the exercise of prosecutorial discretion (...) .” (A/HRC/47/34, para. 26)

Identification of victims and persons at risk of trafficking is essential to ensuring protection of victims. Specifically, we remind your Excellency’s Government of its positive obligation under international law, to identify and assist victims of trafficking, and persons at risk of trafficking, without discrimination. The Special Rapporteur on Trafficking in Persons, especially women and children has highlighted that: The intersections of gender, race and ethnicity, migration status and poverty are visible in failures to implement the principle of non-punishment and in the contestation by States with regard to its status and scope of application. The obligations arising in international human rights law to eliminate direct, indirect and structural racial discrimination are particularly relevant to the application of the non-punishment principle (A/HRC/47/34, para. 26).

We remind your Excellency’s Government of its obligation to ensure identification and protection of victims of trafficking, and persons at risk of trafficking, without discrimination on grounds of gender, including gender identities, noting the particular risks that may be faced by trans persons and persons of diverse gender identities. We highlight the State’s obligation under Article 6(4) of the Palermo Protocol, to take into account, “the age, gender and special needs of victims of trafficking in persons”.

We remind your Excellency’s Government of its obligation to ensure assistance and protection to victims of trafficking, and not to subject victims of trafficking to a deprivation of liberty. Specifically, the Special Rapporteur has highlighted States’ obligation to ensure that, “all presumed or identified trafficked persons must be promptly removed from detention or any situation of deprivation of liberty and provided with assistance and protection. (A/HRC/47/34, para.59)

The Special Rapporteur on Trafficking in Persons, especially women and children, has highlighted the obligations of states to ensure equal protection of the law to persons with disabilities who may be at risk of trafficking. The obligation of non-refoulement arises under the Convention on the Rights of Persons with Disabilities (Articles 10 and 15). The Special Rapporteur has highlighted the obligation of states to: “ensure equal protection of the law and equality before the law in all anti-trafficking measures, including in ensuring the effective implementation of the non-punishment principle for trafficked persons with disabilities.”