

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

Ref.: AL NLD 2/2022
(Please use this reference in your reply)

2 March 2022

Excellency,

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 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 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged use of automatic immigration detention of Venezuelan migrants and asylum seekers, including children, arriving irregularly to Curaçao, where they are held in dire conditions of detention for indefinite periods of time.**

According to the information received:

Venezuelan migrants and asylum seekers, including children, who attempt to reach Curaçao irregularly through the sea route are allegedly automatically detained by Curaçaoan authorities, on the grounds of their migration status. They are reportedly detained for an indefinite period of time while waiting to be deported to the Bolivarian Republic of Venezuela. Allegedly, they are subjected to dire conditions of detention, while held at police cells and at the Foreigners Barracks in the SDKK prison (*Sentro di Detenshon i Korekshon Kòrsou*). Throughout the detention process, it has been reported that Venezuelan individuals are dissuaded by Curaçaoan authorities from seeking international protection. The practice of automatic use of immigration detention of Venezuelan irregular migrants in the constituent country of Curaçao has allegedly been ongoing since 2018. The information concerning current number of migrants in detention in Curaçao remains unknown to the public.

According to the sources, Venezuelan migrants are arrested after being intercepted by the Dutch Caribbean Coastguard when they attempt to reach Curaçao by boat. Then, the Coastguard hands them over to the Curaçao immigration authorities. Reports received refer to the use of intimidating tactics used by Coastguard officials during the interception of boats with migrants on board, such as pointing of weapons at them and firing warning shots. On the other hand, it has been reported that Venezuelan nationals and other migrants already living in the island without residence status are also automatically detained by the Curaçaoan immigration police. Migrants arrested both on land and at sea are reportedly handcuffed and first brought to the police station in Rio Canario.

During their detention at the police station in Rio Canario, arrested migrants reportedly do not have access to legal assistance nor to interpretation services. They are not informed of their right to seek international protection. Irrespective of their international protection needs, all arrested migrants receive a deportation order, written in Dutch, and they are allegedly pressured by immigration officers to sign it, using intimidating language. Venezuelan migrants are later transferred from the police station to the detention centre at Foreigners Barracks in the SDKK prison, irrespective of whether they have signed the deportation order.

According to the information received, there is no automatic judicial review of the detention decision: detained migrants can only be released pursuant to a decision by the Minister of Justice and if they have a guarantor. Reportedly, there is not legal maximum period for the detention of foreign nationals, as provided by article 10.5 of the Instruction of the National Ordinance Admission and Expulsion (*Landsverordening Toelating en Uitzetting* or LTU), although it should not last longer than the time required to actually remove the person from the country. In practice, the length of the detention for each person can vary between a few days and more than a year.

Moreover, we have received reports concerning alleged poor conditions of detention and abuse in closed detention centers and police cells. Migrants and asylum seekers held at the Foreigners Barracks are allegedly subjected to dire conditions of detention, in overcrowded cells, lacking privacy, with insufficient beds, scarce and spoiled food, and poor hygiene conditions affecting their health. Many of them reportedly sleep on the floor on dirty mats, with no sheets. According to the reports, when the Foreigners Barracks reach their full capacity, migrants are often transferred to the regular part of the prison, to be held with convicted prisoners.

Allegedly, migrants and asylum seekers in detention also suffer abuse and mistreatment from prison guards, including daily insults and physical violence. In this regard, in 2018, the Committee against Torture, in its concluding observations to the Netherlands, already expressed concern “that in Curaçao, persons in need of international protection awaiting deportation, mostly Venezuelans, are detained in closed facilities in appalling conditions and are subjected to ill-treatment and sexual assaults by police and immigration officials, against whom no charges have been brought”.

Furthermore, Curaçaoan authorities and law enforcement personnel, including the police, immigration officials and prison guards, have reportedly used physical and verbal intimidation against Venezuelan migrants through all stages of the arrest and detention processes, discouraging them from seeking legal assistance and/or international protection.

Similarly, Venezuelan children arriving in Curaçao are also allegedly detained based on their or their parents' migration status, after being intercepted by the Coastguard or arrested by the immigration police, reportedly following the same procedure as adults. They are allegedly separated from their parents and held in custody either in Foreigners Barracks or at juvenile institutions. Some reports refer to children being detained together with adults. On the other hand, children arriving irregularly whose parents already reside in Curaçao are

reportedly not allowed to reunite with them. Instead, they are allegedly placed in detention, and it has been reported that their parents are not allowed to visit them. In this regard, the Committee on the Rights of the Child, in its concluding observations to the Netherlands published on 11 February 2022, expressed concern over reports of the detention of asylum-seeking children, as well as over their separation from parents who are detained for immigration-related purposes in Curaçao (CRC/C/NLD/CO/5-6, para. 36).

Furthermore, Curaçaoan authorities have deported Venezuelan children without necessary procedural safeguards and without undertaking necessary arrangements for the care of the child or to ensure their safety upon return in Venezuela. In addition, the CRC has also expressed concern over the deportation of asylum-seeking children without review of their cases (CRC/C/NLD/CO/5-6, para. 36).

Curaçao remains a destination country for migrants and asylum seekers fleeing Venezuela. In the absence of safe and regular pathways, Venezuelan nationals continue to depart to Curaçao by boat, through the dangerous sea route. Since 2019, at least 60 persons have reportedly disappeared or died along this route, in an attempt to reach Curaçao. In this regard, concerns regarding the disappearance of a boat from Venezuela to Curaçao with alleged victims of trafficking on board in June 2019 were subject to previous communication AL NLD 2/2020, transmitted by Special Procedures' mandate holders on 14 September 2020.

While we do not wish to prejudge the accuracy of the information received, we would like to express our grave concern over the alleged ongoing use of automatic immigration detention of Venezuelan migrants and asylum seekers arriving or residing irregularly in the constituent country of Curaçao, including children and persons in need of international protection. In this regard, we would like to refer your Excellency's Government to the report of the to Special Rapporteur on torture (A/HRC/37/50), in which he concluded that "criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration, and should be regarded as arbitrary (para. 25)."

We are also gravely concerned that migrants are held in immigration detention for prolonged or indefinite periods of time which can reportedly extend over a year. In relation to these allegations, we would like to recall that, according to international human rights standards, detention for immigration related purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available. Moreover, we would like to recall that, in accordance with the provisions of international human rights law, irregular entries should not be treated as criminal offences: the act of seeking asylum is legal and border crossing without authorization should be considered at most an administrative offense.

In particular, we wish to express our most serious concern regarding the alleged detention of Venezuelan migrant children in closed detention centres. In this regard, we wish to emphasize 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 note with concern that arriving Venezuelan children have not been allowed to reunite with their parents residing in Curaçao, and some of them have been allegedly deported to Venezuela with no care arrangements. We stress our deepest concern regarding the well-being of children in detention and of those deported to the Bolivarian Republic of Venezuela and wish to highlight that families should never be separated unless such measure is necessary to ensure the best interests of the child.

Furthermore, we are deeply concerned about the physical and mental integrity of migrant detainees in overcrowded immigration detention centres. We wish to express our deepest concern over ongoing allegations of inhumane conditions of detention at the Foreigners Barracks at the SDKK prison. In addition, we express our grave concern over reports of mistreatment and abuse of Venezuelan migrants and asylum seekers under arrest and detention by Curaçaoan authorities, in prison cells and at the prison. These allegations, if confirmed, would amount to cruel, inhuman or degrading treatment or punishment. In this regard, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture, as codified in articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture."

We are also concerned by alleged obstacles faced by detained migrants and asylum seekers in accessing legal assistance and international protection procedures, and particularly by allegations of Curaçaoan authorities actively dissuading them from accessing these rights, by using verbal and physical intimidation. 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". Asylum seekers should have access to a full and fair hearing of their claims, with adequate legal representation. In relation to this, we are also concerned that Venezuelan migrants may be pressured to sign deportation orders, without taking into consideration their needs of international protection. We are concerned that this practice may risk violating the principle of *non-refoulement*.

Furthermore, in any event, involuntary returns cannot be lawfully carried out without due process of law. In this connection, under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual's circumstances and in accordance with the law and when procedural guarantees have been respected. In this connection, individuals facing deportation should have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions.

We continue to stress that a failure to acknowledge a deprivation of liberty by State agents or the refusal to acknowledge detention are constitutive elements of an enforced disappearance regardless of the duration of the deprivation of liberty or concealment concerned. In this regard, we underline that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible human rights violations. These safeguards include immediate registration,

judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the assistance of a defence lawyer of one's choice. The prohibition of enforced disappearance is absolute and non-derogable as established under article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance and article 1 of the International Convention on the Protection of All Persons from Enforced Disappeared (ratified by the Netherlands on 23 March 2011).

Furthermore, we recall 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. In this regard, the Netherlands should also consider facilitating, including by the issuance of visas, the arrival of relatives of the disappeared involved in the search for their loved ones.

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 provide information on the factual and legal grounds for the deprivation of liberty of migrants and asylum seekers, and how this is compatible with the international human rights obligations of the Netherlands.
3. Please provide information regarding alternative and less restrictive measures to deprivation of liberty that can be applied to migrants and asylum seekers, including persons who entered the territory of Curaçao 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. Also, please provide detailed information on the existing legal procedures in the Netherlands, ensuring the possibility for foreign nationals, including Venezuelan migrants and asylum seekers in detention, to challenge their detention and the safeguards applied in that regard.
4. 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. Please also indicate 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 steps taken by local authorities and the Government of the Netherlands to search for disappeared migrants and asylum seekers along the maritime route between Venezuela and Curaçao, and to inform their relatives, counsels or any other person with legitimate interest about their fate and whereabouts.
6. Please provide detailed information on the Foreigners Barracks at the SDDK Prison, in which migrants and asylum seekers are being detained, including information on the conditions of detention and treatment of detainees, and please explain how this is compatible with international human rights obligations. Kindly include information on any plans of your Government to address immediately their dire living conditions at these facilities.
7. Please include details, and where available the results, of any investigation carried out in relation to the allegations of ill-treatment of Venezuelan migrants and asylum seekers at the prison and police cells. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how it is compatible with the international human rights obligations of the Netherlands.
8. Please indicate what measures have been taken by your Government to protect the human rights of migrants and asylum seekers at international borders, including ensuring their access to legal aid and their effective access to asylum and other international protection procedures, in accordance with the Netherlands' obligations under international human rights. Please indicate measures taken by your Government in carrying out individualised risk assessment, prior to deportation of migrants and asylum seekers, to ensure the full respect of the principle of non-*refoulement*.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

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 Excellency's Government attention to article 3 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to life, liberty and security of person". Article 9 of the UDHR establishes that "no one shall be subjected to arbitrary arrest, detention or exile". Similarly, we would like to recall articles 6 (1), 7, 9, 10 and 16, 24 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Netherlands on 25 June 1969, that guarantee 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 wish to recall 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. If 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 (UDHR) and article 9.1 of the ICCPR.

Furthermore, we draw your Excellency's Government's attention to the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by the Netherlands in 2011, as well as the Declaration for the Protection of All Persons from Enforced Disappearance, which establish that no State shall practice, permit or tolerate enforced disappearances. The Convention and Declaration each proclaim that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall that the Convention and Declaration set out the necessary protection by the State, in particular the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons, including information related to any transfers. Both the Convention and the Declaration stipulate that States shall not expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. Notably, articles 15 and 24 of the Convention stipulate that each State Party shall take all appropriate measures, including through international co-operation, to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

We also refer to the Working Group on Enforced or Involuntary Disappearances report on enforced disappearances in the context of migration (A/HRC/36/39/Add.2) which outlines a number of relevant recommendations related to: prevention of enforced disappearances of migrants; search for disappeared migrants; investigation, criminalization and prosecution; protection and right to an effective remedy; and international co-operation.

In addition, we would like to draw your Government's attention to the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), 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". The Working Group also underlined that such "[D]etention must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case" and that it "must not be punitive in nature and must be periodically reviewed as it extends in time."

Furthermore, we recall that 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 bring to the attention of your Excellency's Government the report on return and reintegration of migrants of the Special Rapporteur on the human rights of migrants (A/HRC/38/4), in which the Special Rapporteur highlights that "experience has shown that detention does not deter irregular migration, nor does it increase the effectiveness of removal procedures; it only increases the suffering of migrants, and may have a long-term detrimental impact on their mental health. Furthermore, detention has no influence on the choice of destination country, nor does it lead to a reduction in the number of irregular arrivals" (para. 40).

On the other hand, in relation to the reports concerning the detention of children, we wish to emphasize 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 the Kingdom of Netherlands on 26 January 1990. 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.

We also wish to refer to the recent concluding observations to the Netherlands of the Committee on the Rights of the Child (CRC/C/NLD/CO/5-6), in which the Committee recommended to prohibit and prevent the separation of asylum-seeking and migrant children from their parents, as well as the detention and/or deportation of children due to their or their parents' migration status, including in the constituent country of Curaçao (para. 37, b). In addition, the Committee recommended extending territorial application of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to Curaçao.

In connection with the allegations of dire conditions of detention, we wish to refer to article 10 of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. We also wish to draw your attention to paragraph 25 of General Comment No. 36 of the Human Rights Committee on article 6 of the ICCPR, on the right to life (CCPR/C/GC/36), which establishes that States parties also have a heightened duty of care to take any necessary measures to protect the lives and bodily integrity of individuals deprived of their liberty by the State, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.

Furthermore, we would like to draw your Government's 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). We further recall that detention conditions and treatment should always comply with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as migration status, age, gender, disability, medical condition, previous trauma or membership in a minority group.

We also wish stress the absolute and non-derogable prohibition of torture and ill-treatment codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), to which Netherlands is a party since February 1985. In this regard, we would also like to recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also recall that whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the CAT imposes an obligation to investigate and to ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment and/or their family receive adequate reparation.

We also wish to recall the 2018 concluding observations to the Netherlands of the Committee against Torture, in which the Committee highlighted that "asylum seekers should not be routinely detained and, if necessary, should be detained only as a measure of last resort for as short a period as possible and in facilities appropriate for their status". The Committee further recommended to ensure that the administrative detention of foreigners is not of long duration and it fully in line with international human rights standards. The experts also expressed concern over allegations of ill-treatment of migrants in detention in Curaçao, and prompted your Excellency's Government to investigate these allegations, effectively and impartially, ensuring that perpetrators are prosecuted and punished.

Regarding the alleged use of force by Curaçaoan authorities, it is strictly regulated under international human rights law. Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Moreover, principle 15 states that 'law enforcement officials, in their relations with persons in custody, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened'. Principle 16 further provides

that law enforcement officials, in their relations with persons in custody shall not use firearms, 'except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9'.

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 article 3 of the CAT. 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. As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of *refoulement* under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and 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. We would like to draw the attention of your Excellency's 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."

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).

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. Safety and the designation of appropriate caregivers for children should be prerequisites to return. Return should not cause children to become homeless, nor should children be housed in orphanages or residential care facilities or held in any situation that could compromise their development or lead to social exclusion. 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.

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".