

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls**

Ref.: AL SAU 9/2022  
(Please use this reference in your reply)

3 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 42/22, 43/6, 44/4, 50/L.7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of cross-border artillery shelling and small arms fire allegedly by Saudi security forces causing the deaths of up to 430 and injuring 650 migrants, including refugees and asylum seekers, in Sa'dah governorate, Yemen, and Jizan province, Saudi Arabia, between 1 January and 30 April 2022. These events appear to occur as part of a series of gross human rights violations against migrants, including torture, arbitrary detention, trafficking in person, and sexual abuse, in the adjacent border region in Yemen. It is alleged that neither the Saudi nor the Yemeni authorities have launched effective investigations to clarify the circumstances of these events and the deaths caused.

According to the information received:

Between 1 January and 30 April 2022, cross-border artillery shelling and small arms fire by Saudi Arabia security forces killed approximately 430 migrants, including refugees and asylum seekers and injured an estimated 650 others. The attacks occurred along the migration route between Al Jawf and Sa'dah in Yemen, a region currently controlled by the Ansar Allah movement (the Houthis movement and de facto authority in Sana'a and northern Yemen), and in the adjacent border area within Saudi Arabia Jizan province. Thirty percent of the victims were reportedly women, and seven percent were children.

In at least 16 incidents, Saudi security forces fired artillery at migrants en route in the Ar Raqw area, and the mountains of al-Ghar in Monabbih district, and Thabit, Qatabir district in Yemen, and the border area of the Red Valley, Saudi Arabia.

*Circumstances of the alleged killings*

Yemen has become a major transit point on the migration route between the Horn of Africa and Saudi Arabia. Migrants have to rely on networks of

traffickers to travel along this route. As a result, they are vulnerable to abuse and violence at various points in their journey from sea transport, to arrival, to crossing border lines in Yemen, and finally when they enter Saudi Arabia. They comprise a large majority of Ethiopian nationals, most of them Tigrayan and a smaller minority of Amhara. Reportedly, 13% of those attempting to cross from Yemen into Saudi Arabia are women and 10% are children.

On the final leg of the most heavily frequented migration route through Sa'dah governorate in northern Yemen, attacks against migrants and other individuals in mixed migration movements continue to occur, committed by both Saudi security forces and Yemeni de facto authorities in northern Yemen. Due to the ongoing conflict, movement restrictions, and containment strategies by Saudi and de facto authorities, migrants near the front lines are extremely vulnerable to entrapment and to indiscriminate or intentional targeting. There are five active frontlines and two major unofficial crossing points into Saudi Arabia in the Thabit, Ar Raqw, and Baqim areas of northwestern Sa'dah, Yemen.

Previously, migrants were primarily shot or injured in the crossfire between the parties to the conflict. However, since a decline in active incidents on the northern frontlines in 2022, migrants have been disproportionately affected by what appears to be direct targeting by Saudi security forces. The latter are believed to be pursuing a policy of excessive use of firearm force to stop and deter migrants from crossing the Saudi-Yemeni border. Saudi security forces use sniper attacks of migrants in small groups, mortars or shelling of migrants in larger groups and shooting of migrants caught in Saudi territory.

Those killed instantly are reportedly either left in situ or, if it is safe to do so, buried by other migrants on site. A clandestine cemetery reportedly located in Al Khals (الخلس) would contain up to 10,000 bodies of migrants allegedly killed in Ar Raqw.

If migrants are captured, they are reportedly oftentimes subjected to torture by being lined up and shot through the side of the leg to see how far the bullet will go or asked if they prefer to be shot in the hand or the leg.

Survivors of such attacks reported having to “play dead” for a period of time in order to escape. Afterwards, they usually make their way to the nearest medical facility for assistance. However, humanitarian medical assistance for migrants is reportedly extremely limited and only provided at a hospital in Monabbih, which is located in a remote and difficult-to-reach region in the adjacent border region in Yemen. Transportation from the border to the hospital is expensive, preventing most survivors from accessing treatment. Most migrants seeking help reportedly have gunshot wounds to the head, spine, and legs.

Groups of women and girls and unaccompanied minors have increasingly impacted by these practices. Women and girls are also at risk of sexual violence at the hands of smugglers and Saudi security forces. Girls as young as 13 years old have reportedly been raped by Saudi security forces and pushed back across the border into Yemen without their clothes.

*Alleged practices of trafficking in persons in Yemen*

The Yemen Immigration, Passport and Nationality Authority (IPNA), which reports to the Ansar Allah movement, collaborates with traffickers to systematically direct migrants through the governorates of Al Jawf and Sa'dah. Traffickers and these authorities reportedly coordinate to extort fees of around 250 Saudi Riyal (SAR) from each migrant under the pretext of facilitating their passage to KSA. This purportedly constitutes an extremely lucrative scheme, earning the IPNA in Sa'dah and the trafficking networks an estimated \$50,000 per week.

Once in Sa'dah, migrants, including victims of trafficking, are held in a reception camp set up by the IPNA and traffickers in the town of Monabbih, where they are forced to finance their journey to the Saudi border through forced labor, sexual exploitation, drug trafficking, and other forms of exploitation. Conditions in the camp are dire as no sanitation facilities exist and only very limited access to water is provided. Migrants, and victims of trafficking, are subject to severe restrictions on their freedom of movement being under continuous guard by armed men. Women and girls are frequently and systematically subjected to sexual exploitation, violence, and abuse.

Pending onward travel, migrants are detained in tents pending payment of fees to traffickers and/or de facto authorities. Failure to pay or refusal to engage in activities such as transporting drugs or *qat* (local plant chewed as a stimulant) reportedly results in detention in a type of prison that resembles a large cage of approximately 10 m<sup>2</sup>. Many of those who are unable to pay for onward travel or who can no longer make themselves useful are forcibly removed to the south of Yemen, reportedly up to 1,000 migrants per week.

More than 27,840 migrants are estimated to be present in Sa'dah, including an estimated 18,000 in Monabbih district, 7,000 in Qatabir district, 1,000 in Sa'dah district, and other migrants in surrounding districts.

The incidents described occur in the broader context of the humanitarian crisis and indiscriminate attacks on civilians by Saudi security forces in the Yemeni border areas of Dhaher, Razih, Shada, and Monibbih districts in Sa'dah governorate.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern about what appears to be a systematic pattern of large-scale, indiscriminate cross-border killings, using artillery shelling and small arms fired by Saudi security forces against migrants, including refugees and asylum seekers, and victims of trafficking. According to these allegations between 1 January and 30 April 2022 up to 430 such individuals were killed and 650 injured, among them children, women and girls. We are also alarmed by the reports of torture committed against migrants, including gender-based and sexual violence against women and girls attempting to cross the Saudi-Yemeni border.

If these allegations prove to be accurate, they may constitute flagrant violations of the rights to life, to personal safety and to integrity under the Universal Declaration

of Human Rights (UDHR), of the Convention on the Rights of the Child (CRC) and Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Saudi Arabia on 26 January 1996 and on 23 September 1997. In addition, the Convention on the Elimination of All Forms of Discrimination Against Women, ratified on 28 August 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (the Palermo Protocol), ratified by Saudi Arabia on 7 September 2020 and 20 July 2007 respectively.

We note with utmost concern that should these reports prove accurate, they would reflect what appears to be a deliberate policy of large-scale, indiscriminate, and excessive use of lethal force by Saudi authorities to stop and deter migrants to cross into Saudi-Yemeni border, causing a very large number of deaths and injuries. Any loss of life resulting from an excessive use of force without strict adherence to the principles of necessity and proportionality constitutes an arbitrary deprivation of life. The right to life is non-derogable, a *jus cogens*, and a norm of international customary law, that must be respected in all circumstances. Under international human rights law, the intentional lethal use of firearms may only occur in the last resort, when it is absolutely unavoidable to protect life, and all other less violent means have been tried and exhausted. This includes a clear warning of the intended use of force, sufficient time to heed that warning, the targeting of non-vital parts of the body, and the provision of medical assistance as soon as possible, if necessary.

The obligation to protect the right to life requires that States take special measures to protect persons who are in vulnerable situations and whose lives are particularly endangered by specific threats or pre-existing patterns of violence, including asylum seekers, refugees, stateless persons and unaccompanied migrant children.

Referring to the report on the unlawful killing of refugees and migrants by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/72/335), we underscore that irregular border crossing, hiding from border officials, or fleeing from arrest or interception at the border are not acts that should be met with lethal force (para. 29). Push-backs do not allow for an individualized assessment of the need for protection and are tantamount to the use of excessive force. We recall that respect for the inalienable principle of non-refoulement enshrined in customary international law and international norms on the use of lethal force, as well as the right to life and physical integrity, must be a top priority when implementing border policies (para. 35). Further, the failure to investigate allegedly unlawful casualties also restricts the understanding of smuggling and migratory patterns (para. 51).

It is our assessment that these attacks and their repetition over time and place, represent a pattern of conduct by Saudi security forces that reflects a policy in disregard of the respect due to human beings in the course of border management operations. We recall and underline the duty of state authorities to conduct thorough, prompt and impartial investigations into and prosecute, and punish all violations of the right to life in line with the *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles)* and the *Revised Version of the United Nations Manual on the Effective Prevention and*

*Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)).*<sup>1</sup> Importantly, investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.

In view of reports of illegal burial sites of executed, killed or otherwise deceased migrants, including refugees and asylum seekers, as well as victims of trafficking, we emphasize that it is of utmost importance to ensure that human remains are recovered and treated both humanely and professionally, that their identities are reliably established, and that the causes and circumstances of their deaths are accurately determined and documented. Only in this way can justice be upheld and the right to truth of family members be guaranteed. If, after identification of the human remains, links to family members in their home countries were established, bodies should be returned to their families.

States have a positive obligation to prevent and combat trafficking in persons for all purposes of exploitation, including sexual exploitation, forced labour and to protect victims, especially women and children. In light of the reports of trafficking of persons in the context of migration, including of refugees and asylum seekers, we highlight the State's obligation to ensure effective access to assistance and protection of victims of trafficking, without discrimination, and to ensure effective investigations of trafficking in persons, in accordance with the Palermo Protocol, and as stated in the *OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

International law also provides for a related State obligation to prevent trafficking of women and girls, for all purposes of exploitation, including sexual or otherwise, and to ensure effective investigations and prosecutions of trafficking in persons, in particular of women and girls, as highlighted by CEDAW in its General Recommendation no.38. States have a positive obligation to ensure assistance and protection to migrants at risk of trafficking,<sup>(A/HRC/38/45)</sup>, in particular unaccompanied and separated children, as recognized by the CRC, and the principle of non-discrimination in international human rights law. We highlight the State's obligation to ensure effective implementation of the principle of non-punishment of victims of trafficking (A/HRC/47/34, paras. 26, 41, 57(d)).

**In light of the above, we respectfully urge your Excellency's Government to put an end to what appears to be a large-scale, indiscriminatory, policy of use of excessive, lethal, firearm force, by its security forces in the border region between Yemen and Saudi Arabia and resort to alternative, non-lethal measures to ensure border control, in compliance with the norms and principles of international human rights law. This includes full respect of the obligations undertaken by your Excellency's Government under UDHR, CAT and CRC. We further respectfully recommend effective prompt, independent and professional investigations into the reports described in this letter, in compliance with these norms, including CEDAW, and the Palermo Protocol.**

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<sup>1</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

The annex “**Reference to international human rights law**”, attached to this letter, cites the key international law and human rights instruments and standards that are 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 any comment you may have on the above-mentioned allegations.
2. Please provide information on whether your Excellency’s Government was informed of and/or consented to, and/or assisted with the execution of the above-mentioned cross-border artillery shelling and small arms against migrants, including refugees and asylum seekers. If so, please provide factual details and all other relevant information on all documented casualties affecting migrants, including asylum seekers and refugees, caused by cross-border artillery shelling and small arms fire since 1 January 2022.
3. Please provide information on the assessment made by the Saudi security forces prior to cross-border shelling and small arms fire, of its potential impact on civilian populations, in particular migrants, including refugees and asylum seekers. Please specify the targeting criteria used and the procedural safeguards employed to ensure that these actions fully complied with international human rights law. In particular, please explain in detail and in relation to the incidents mentioned in this communication, how the proportionality of such actions and the protection of the life and physical and mental integrity of persons crossing the Yemeni-Saudi border area were ensured.
4. Please indicate detailed information on the circumstances of such attacks and the rationale behind them as well as to what extent these operations are part of Saudi border management policies. In this regard, please provide detailed information on the access to and use of explosive weapons, including artillery, by Saudi security forces at the border area and what regulations and safeguards are put in place in this context. Please also share any of its rules, policies, procedures or practices on border management, particularly with respect to the use of force. Please indicate how these operations comply with the international human rights obligations of Saudi Arabia.
5. Please provide information in relation to the allegations of torture or/and ill treatment committed by Saudi security forces against migrants, including asylum seekers and refugees and if any perpetrators have been held accountable.
6. Please provide information on the measures taken to protect migrant women and children from gender-based violence, including sexual violence and to hold the perpetrators of such actions accountable.

7. Please provide information on any survivor-centric investigations carried out by your Excellency's Government, into the above-mentioned operations, and their results, if any. Please indicate whether your Excellency's Government has taken any follow-up action to implement the findings and recommendation of such investigations and, if so, provide details, including of reparations made to the victims and/ or their families and the process through which these reparations are being administered. If no investigations have been carried out or if they have been inconclusive, please explain why.
8. Please indicate the steps taken aimed at holding accountable anyone within the ranks of Saudi security forces, including superior officials, who engages in violations of human rights. If no one has been held accountable so far, please indicate why.
9. Please indicate if the bodies of the allegedly killed and deceased migrants, including asylum seekers and refugees, who are buried in the area under the jurisdiction of your Excellency's Government have been preserved, exhumed if necessary, and identified. Please also indicate if any investigations have been carried out in full compliance with the Minnesota Protocol.
10. Please indicate any steps taken or envisioned to be taken to implement effective safeguards against human rights violations of migrants, including refugees and asylum seekers, irregularly crossing the Yemeni-Saudi border.

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.

We may publicly express our concerns on the subject of this letter, since in our view, the information at hand appears sufficiently reliable, and indicates a matter of such gravity, that it warrants the most serious attention. We would however welcome an official clarification from Your Excellency's Government about these allegations. Any public expression of concern from our mandates will indicate that we have been in contact with you to clarify the issue/s in question.

A letter with similar concerns is transmitted to the de facto authorities controlling the adjacent border region in Yemen. We stress that the letter addressed to de facto authorities does not in any way imply the expression of any opinion concerning the legal status of any territory, city or area, or of its authorities. A copy of this letter is also transmitted to the Government of Ethiopia.

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

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

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Siobhán Mullally  
Special Rapporteur on trafficking in persons, especially women and children

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency Government attention to its international obligations, relevant for this case. In particular, we refer to articles 2, 3, 5, 7, 13 and 14 of the Universal Declaration of Human Rights, which provide that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to freedom of movement, the right to seek and to enjoy in other countries asylum from persecution and to enjoy these rights without discrimination to equal protection of the law or distinction of any kind, such as race, colour, sex, or national origin among others. We also refer to article 6 of the Convention on the Rights of the Child (CRC) as well as articles 2, 3 and 12 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Saudi Arabia on 26 January 1996 and on 23 September 1997 respectively.

In light of these grave allegations, we recall that the right to life constitutes an international customary and *jus cogens* norm, universally binding at all times (A/HRC/35/23, paras 25-26). We would further like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990) provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 9 provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. In particular, "Firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender" (A/61/311, para. 38). The use of force should be gradual, starting at a low level and escalating only where necessary, as determined by the resistance offered by suspects (ibid., para. 41). Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

In relation to the alleged push-backs against migrants as a result of killings and excessive use of force and practices of torture deployed against them, we refer to the inalienable principle of non-refoulement enshrined in customary international law, which requires States to refrain from transferring persons to countries where there are

substantial grounds for believing that there is a real risk that their right to life or their right to be free from torture and/or ill-treatment may be violated, which based on the information received, appears to be the case in the adjacent border regions in Yemen. In this regard, principle 5 of the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* establishes that no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

We would like to refer to the report of the Special Rapporteur on the human rights of migrants on the human rights violations at international borders: trends, prevention and accountability (A/HRC/50/31). In this report, the Special Rapporteur stressed that States should increase their efforts to develop a human rights-based, gender-responsive, age- and child-sensitive approach to migration and border governance that ensures that the human rights of migrants, including those in irregular situations, are always the first consideration. The Special Rapporteur further urged Member States to put an end to pushback practices, to suspend, cancel and revoke, as necessary, initiatives to legalize pushbacks, and to respect fully the prohibition of collective expulsion and uphold the principle of non-*refoulement*.

We further recall that in the report of the Special Rapporteur on the human rights of migrants regarding means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30), the Special Rapporteur recommended that States ensure that the use of force and firearms by border authorities is strictly regulated in accordance with international standards, and that any allegation of misuse is promptly investigated and appropriately sanctioned; ensure promptly and thoroughly investigate allegations of human rights violations and abuses at international borders; and establish effective independent monitoring mechanisms and ensure access to all migration-related facilities and procedures to monitor their compliance with international human rights laws and standards; protect and fulfil the rights of migrants who have suffered human rights violations or abuses as a result of border governance measures; and take proactive steps to follow up on and investigate pushback allegations in a prompt, effective and transparent manner, to remove suspected perpetrators from duty and to prosecute them where appropriate.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the aforementioned Prevention and Investigation Principles, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions." Principle 17 provides that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations." In addition, the *Revised Version of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota*

*Protocol on the Investigation of a Potentially Unlawful Death (2016)*<sup>2</sup> also provides that investigations must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.

In light of the reported existence of clandestine burial sites of deceased migrants, the Minnesota Protocol includes guidance on all stages of the investigation process and has detailed guidelines on crime-scene investigation, interviews, excavation of graves, autopsy and analysis of skeletal remains. As stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the findings from a forensic autopsy or post-mortem examination are essential for establishing the circumstances of the death and help to determine the causes and manner of the death and that the duty to investigate applies to all potentially unlawful deaths without distinction of any kind (A/HRC/50/34, paras. 22 and 80).

We also refer to the report on the unlawful killing of refugees and migrants (A/72/335) by the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Special Rapporteur indicates that “non-investigation also contributes to continuing policies and practices that may amount to excessive use of force or to lack of due diligence in addressing preventable and foreseeable deaths (para. 51)”. When the duty to investigate is applied to unlawful deaths in the context of mass movements of people, including through smuggling or trafficking, the Special Rapporteur stated in paragraph 52 of the aforementioned report that:

- “a) the duty is heightened in situations involving State actors, including allegations of excessive use of force;
- b) it extends to deaths that occur at the hands of non-State actors, encompassing persons unknown as well as to unlawful deaths resulting from unsafe conditions, self-inflicted harm or risky activity;
- c) investigations include identifying the dead or missing, and determining the cause of death;
- d) a formal complaint is not necessary nor does a body need to be found;
- e) family members of deceased refugees and migrants have the right to take part in an investigation into an unlawful death, and to obtain available information on the causes of death: they also have the right to equal and effective access to justice; to adequate, effective and prompt reparation (E/CN.4/1998/43, paras. 68-75 and A/HRC/22/45); and to recognition of their status before the law (A/HRC/19/58/Rev.1, chap. II, sect. H, para. 42).”

We would also like to bring to the attention of your Excellency’s Government article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence

<sup>2</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

against women, whether those acts are perpetrated by the State or by private persons. We would also like to refer to article 6 which states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” In this context, we recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women whether perpetrated by a State official or a private citizen, in public or private life. We would also like to refer to CEDAW General Recommendation General No. 38 on trafficking in women and girls in the context of global migration.

As highlighted in its thematic report on Health and Safety (A/HRC/32/44), the Working Group on discrimination against women and girls stresses that women’s safety should be addressed as an integral aspect of women’s health. Women’s exposure to gender-based violence in both the public and private spheres, including in conflict situations, is a major component of women’s physical and mental ill health and the destruction of their well-being, and constitutes a violation of their human rights.

In addition, in its report on women deprived of liberty (A/HRC/41/33), the Working Group on discrimination against women and girls noted that measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups and sometimes even women human rights defenders. It has further recommended States to ensure that measures addressing conflict, crisis, terrorism, and national security incorporate a women’s rights focus and do not instrumentalise women’s deprivation of liberty for the purposes of pursuing government aims.

In its report to the Human Rights Council on sexual and reproductive rights in crisis (A/HRC/47/38), the Working Group on discrimination against women and girl stressed that crisis responses must be gendered and require a combination of emergency and long-term measures. They must be developed and implemented with the active participation of women and girls, taking into account their urgent medical needs and the pervasive structural discrimination against them, while protecting individual autonomy and freedoms, through a coordinated and holistic approach. The Working Group stressed that sexual and reproductive health matters are intrinsic to every woman and girl and tied to their ability to live with dignity and exercise their agency. It expressed deep concern about the widespread impunity for violations of the sexual and reproductive health rights of women and girls. The experts recalled the importance of ensuring access to the full range of sexual and reproductive health services during a conflict, as highlighted by Security Council resolution 2122 (2013) on women, peace and security.

In the same report, the Working Group noted the promising practice of conducting independent investigations by national and specially appointed international commissions that have exposed wide-ranging violations of the sexual and reproductive health rights of women and girls in various situations of crisis and offering clear guidance on reparations and structural reforms. Women and girls are entitled to receive

adequate reparations, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, for violations of their sexual and reproductive health rights, and States have a core obligation to ensure access to effective and transparent reparations. The Working Group recommended expanding the availability of sexual and reproductive health services, including through telemedicine and mobile clinics, to reach diverse populations. The Working Group also recommended ensuring access to a full range of contraceptive information and services for women and girls, including emergency contraceptives. It recommended expanding access to safe abortion services, including medical abortion and post abortion care, and remove legal barriers to abortion, in particular in situations of crisis.

The Special Rapporteur on violence against women and girls, its causes and consequences, also reminds your Excellency's Government of the Convention on the Elimination of All Forms of Discrimination against Women, which your Excellency's Government ratified in 2000. The Convention which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 6 specifically requires States Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women".

In its General Recommendation no. 38 on trafficking in women and girls in the context of global migration (2020), CEDAW states: "Obligations flowing to non-State actors to respect the prohibition of trafficking also arise from the peremptory norm (jus cogens) prohibiting slavery, the slave trade and torture, noting that in certain cases trafficking in women and girls may amount to such rights violations." Further, recalling CEDAW General Recommendations no. 38, we remind your Excellency's Government that victims of trafficking "[...] must be ensured access to justice on the basis of equality and non-discrimination, including the prosecution of their perpetrators and the provision of remedies" (CEDAW/C/GC/38 para. 42). States parties must: "provide appropriate and effective remedies, including restitution, recovery, compensation, satisfaction and guarantees of non-repetition, to women whose rights under the Convention have been violated" (CEDAW/C/GC/38 para. 43).

We also recall article 34 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified in 1996. Article 35 provides that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. We would also like to refer to the joint General Comment – N. 4 of the CMW and N. 23 of the CRC – on state obligations regarding the human rights of children in the context of international migration.

We recall principle 2 of the OHCHR Principles and Guidelines on Human Rights and Human Trafficking, which states the obligation of due diligence on States: "States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons."

Further, the Special Rapporteur on trafficking in persons, especially women and children, has highlighted the positive obligation on States to ensure timely identification

of, assistance to and protection of victims, and: “(a) Ensure that trafficking in persons for all purposes of exploitation are recognized, including for the purposes of forced labour, servitude, slavery or practices similar to slavery, forced marriage and forced criminality [...]” (A/76/263).

We would also like to bring to the attention of your Excellency’s Government, the Report of the Special Rapporteur on trafficking in persons, especially women and children, (A/HRC/47/34), on Implementation of the Non-Punishment Principles. The report highlights that the principle of non-punishment must be applied without discrimination to all trafficked persons.

We would also like to bring to your attention the Report by the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council (A/HRC/38/45) on early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements.

Finally, we would like to draw the attention of your Excellency’s Government to States’ obligations to provide victims of human rights violations with effective remedies. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed of: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.