Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Ref.: AL USA 23/2022
(Please use this reference in your reply)

23 November 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 and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 43/6, 51/8 and 43/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **current migration and border governance policies adopted by the United States of America since 2020, which have reportedly hindered protection seeking migrants' access to the U.S. territory and to asylum procedures in the country. Concerns include allegations of collective expulsions carried out at the border with Mexico under the authority of Title 42 of the U. S. Code, including recent expulsions of thousands of Venezuelan nationals without adequate procedural safeguards, including against *refoulement***.

Concerns related to alleged collective expulsions and removal of migrants and asylum seekers from the United States of America under the authority of Title 42 of the U. S. Code have been subjected to previous communication AL USA 27/2021, sent by several mandate holders of the Special Procedures on 14 October 2021. Similarly, concerns regarding immigration U. S. policies, namely the Migrant Protection Protocols (MPP) or the "Remain in Mexico" policy, were raised in OL USA 4/2019, sent by the Special Rapporteur on the human rights of migrants on 7 March 2019. We regret that, to date, no responses have been received to these communications. Furthermore, other concerns in relation to U. S. forcible return policies that threaten to violate the principle of *non-refoulement* were addressed through communications USA 12/2018, and USA 23/2017, sent on 19 June 2018 and 19 October 2017, respectively.

According to the information received:

On 13 October 2022, approximately 200 Venezuelan migrants were reportedly summarily removed from Texas and returned to Mexico over the shared land border between the two countries, without carrying any individualized assessment of their circumstances and protection needs, and in the absence of any procedural guarantees. Allegedly, no expulsion or deportation order was issued. Their expulsion has reportedly led to instances of family separation, as some Venezuelan women were returned to Mexico while their husbands were admitted into the United States.

Prior to their expulsion, these Venezuelan individuals were allegedly placed in detention under the custody of U.S. border police officers, in overcrowded

detention centres and without issuing a detention order. It has been reported that those detained were not given the opportunity to apply for asylum in the United States prior to their deportation, despite being reportedly told by the U.S. authorities that they would be transferred to offices for immigration procedures where they would be allowed to lodge such applications. In addition, they were reportedly not allowed to make phone calls during their detention. It has also been reported that U.S. authorities carried out an official registration of data of affected Venezuelans, taking their individual fingerprints and photographs before returning them to Mexico. Concerns have been raised that this data collection and registration could negatively affect their future applications for international protection in the United States.

Reports received also refer to the removal of migrants' personal belongings by U.S. officials upon detention, including identity documents, cell phones and money. In some instances, confiscated items were allegedly destroyed or not returned before these persons were deported. Allegedly, officers broke cell phone screens when migrants attempted to use them to record the procedures they were subjected to.

The alleged collective expulsion of Venezuelan nationals on 13 October 2022 follows the expansion of an ongoing pattern of collective expulsions of migrants carried out by the United States since March 2020, under the adoption of Title 42 of the United States Code. On the grounds of health emergency concerns related to the COVID-19 pandemic, Title 42 was invoked by the previous U. S. administration to block entry into the United States and to summarily expel migrants encountered by the U.S. Border Patrol and the Office of Field Operations at the borders with Mexico and Canada, without adequate procedural guarantees and other safeguards. This border expulsion policy has effectively closed U.S. southern ports of entry to nearly all migrants, including asylum seekers, and has resulted in their immediate removal to their countries of origin or Mexico. We have been informed that, since its adoption in March 2020, the U.S. authorities have collectively expelled over two million foreign nationals. Reportedly, these policies have disproportionately impacted non-white migrants apprehended at the southern border.

This expulsion policy has continuously been renewed since it was first enacted in 2020 and resumed in 2021 under the new administration, despite reported ongoing objections by medical experts of the Centers for Disease Control and Prevention, the national public health agency of the United States. Several human rights organizations and UN mechanisms have also repeatedly raised concerns about Title 42 and recommended repealing it[1]. On 15 November 2022, the U.S. District Court for the District of Columbia issued a ruling blocking the US government from continuing to use Title 42 to swiftly expel migrants who cross the southern border. In response to the court's order, the U. S. Department of Justice filed an unopposed stay motion putting on hold the ruling for five weeks, arguing that this delay in the implementation "will allow the government to prepare for an orderly transition to new policies at the

[1] See, for example, the concluding observations to the United States of America of the Committee on the Elimination of Racial Discrimination, of 12 September 2022, in which the Committee recommended to "redouble efforts to swiftly repeal Title 42 and the Migrant Protection Protocols" (CERD/C/USA/CO/10-12, para. 52. c).

border." Therefore, so far Title 42 remains valid until 21 December 2022.

Venezuelan nationals, among other nationalities, were formerly not subjected to expulsion procedures under Title 42. However, on 12 October 2022, the U.S. announced the decision to extend Title 42 to include Venezuelan nationals, as part of a joint action with the government of Mexico to reduce the number of Venezuelan nationals arriving to the U.S. southern border. Effective immediately after this announcement, all Venezuelans who cross the southern border of the United States with Mexico can be removed to Mexico, without the possibility of applying for international protection in the United States. In this regard, reports received indicate that those Venezuelans subjected to collective expulsion on 13 October 2022 had been in United States territory between 7 and 15 days before the announcement of the revocation of exemption, which means the decision to extend Title 42 to include Venezuelan nationals was applied retroactively on the group of Venezuelans who were deported on 13 Oct 2022.

As of 18 October 2022, over 4,000 Venezuelans have reportedly been removed to Mexico under Title 42. Those expelled have reportedly been given visas valid for just a few days or received documents from Mexican authorities instructing them to leave the country via the Mexico-Guatemala border. The legal status of Venezuelan migrants returned to Mexico remains unclear, as it has been reported that these documents do not allow them to remain in Mexico or access public services such as health care or education.

Furthermore, the decision to expand the application of Title 42 was accompanied by a parallel announcement of a new migration process ("Humanitarian Parole Process") implemented by the Department of Homeland Security to allow up to 24,000 Venezuelan nationals to travel to the United States by plane, for a period of up to 2 years. To qualify for this program, Venezuelan citizens must have a financial sponsor in the United States, who applies to the program on their behalf and agrees to provide housing and financial support for the duration of the parole. Eligible individuals must also hold a valid passport, pass a biometric biographical national security and public safety check, and they must meet all public health requirements. They must also cover travel expenses to fly to an interior U.S. port of entry.

The program began on 18 October 2022. Those who are admitted in this migration process may request work authorization once they are in US territory. They are able to apply for asylum in the United States. Those who are not granted asylum or other immigration benefits will be required to leave the U.S. at the expiration of the parole; otherwise, they will be placed in removal proceedings.

However, concerns have been raised over the difficulty of fulfilling these requirements, which would leave many Venezuelans unable to apply for this new program. Many Venezuelans face administrative and economic barriers to obtaining or renewing official documents, including passports and official certificates. Furthermore, according to the publication of the policy in the Federal Registry, individuals are ineligible to apply "if they have crossed into the United States between POEs [port of entry], or entered Mexico or Panama

without authorization, after 19 October 2022." In this regard, it is unclear whether individuals who arrived in Panama, Mexico or the US before 19 October are eligible to apply, which has raised concerns over the uncertainty of their situation. Similarly, they will not be admitted into the U.S. territory under this new process if they have been issued with an expulsion order in the last 5 years. The implementation of the Humanitarian Parole Process will depend on whether Mexico continues to accept the removals of Venezuelan nationals from the United States.

These new migration rules were made amid the increasing arrival of Venezuelan migrants across the southern border of the United States, fleeing the humanitarian and economic crisis in the Bolivarian Republic of Venezuela. Between October 2021 and August 2022, over 154,000 Venezuelan citizens were detected at the border, four times more than the previous year, and 33,000 were encountered in September 2022. Most of them traveled to Central and North America through Panama, with around 3,000 persons crossing daily from Colombia into the Darien Gap, where they suffered violence and abuses.

Without prejudging the accuracy of the information received, we are deeply concerned about the ongoing U.S. border governance policies restricting access to the territory and asylum procedure, which have a severe negative impact on the enjoyment of the human rights of migrants. Particularly, we express our serious concern about the alleged collective expulsions of foreign nationals to their countries of origin and to Mexico, without an individual assessment of their protection needs under international human rights and refugee laws.

In this regard, we wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of *non-refoulement* and the prohibition of arbitrary and collective expulsions. Involuntary returns cannot be lawfully carried out without due process of law: 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. Denial of access to territory without safeguards to protect against *refoulement* cannot be justified on the grounds of any exceptional operational challenge, such as the size of migratory movements.

We also note with particular concern that border governance policies adopted by the United States of America since March 2020 have allegedly restricted the access of migrants to asylum procedures. In this regard, 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 also wish to express our concern on the decision to expand the use of Title 42 to include nationalities previously exempted, namely Venezuelan citizens, who may be at risk of irreparable harm if returned to their country. We also wish to express our concern over policy decisions aimed to reduce the arrival of foreign nationals in the United States of America. While we acknowledge the efforts made by the United States to establish a new safe pathway for Venezuelan citizens to arrive by

plane in the U.S. territory, we are concerned by the limited scope of such program, practical barriers faced by potential applicants and the lack of alternative pathways for migrants and asylum seekers to safely arrive in the United States. Particularly, we are concerned by the exclusion from official channels of those migrants travelling irregularly. In this regard, we wish to emphasize that, according to international human rights and refugee laws, migrants arriving at international borders, regardless of how they have travelled, should have access to individualized, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights and refugee protection needs, including access to asylum, in an age-sensitive and gender-responsive manner. The act of seeking asylum is always legal, and effective access to territory is an essential precondition for exercising the right to seek asylum.

We fear that migration policies adopted by the United States of America since 2020, including the recent decisions mentioned in this communication, contribute to exacerbating the already dire situation faced by migrants and asylum seekers at the U.S. – Mexican border, especially considering the perilous journeys most of them have undertaken, as reports of migrant, mainly Venezuelan, crossing Panama through the Darien Gap and Mexico continue increasing every day. We stress that States should increase their efforts to develop a human rights-based approach to migration and border governance that ensure that the human rights of migrants, including those in irregular situations, are always the first consideration.

Further, we caution that U.S. immigration policies which effectively prevent Venezuelan from entering the country and asserting asylum claims could constitute racial discrimination under international human rights law. We are particularly concerned that the collective expulsions of certain nationalities, including Venezuelan nationals, could further violate the fundamental human rights principles of equality and non-discrimination and the International Convention on the Elimination of Racial Discrimination (ICERD) which the United States is a party to. We note that, to the extent that the same policies are enforced at the Southern border against migrants from other majority non-White countries, similar concerns about the racialized deterrence of legal asylum claims are warranted.

Finally, we wish to express our concern about the alleged detention of the Venezuelan nationals in overcrowded detention centres prior to their deportation on 13 October 2022. In connection with 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. In addition, we are concerned by the allegations referring impediments to communicate with the outside world during their detention, as well as the impossibility to access asylum procedures and the alleged subtraction and destruction of their personal belongings by U.S. authorities.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 disaggregated information on the number of Venezuelan nationals who were allegedly removed to Mexico from the U. S. on 13 October 2022. Please include information on their whereabouts and the legal status they are subjected to in Mexico.

3. Please provide additional disaggregated information on the number of migrants and asylum seekers currently detained at the border pending implementation of expulsion under Title 42 and legal protections provided for these migrants, including Venezuelan migrants.

4. Please provide detailed information on the detention centres in which migrants and asylum seekers awaiting deportation are detained, including conditions of detention and treatment of detainees, and please explain how this is compatible with international human rights obligations. Please explain how migrants are ensured equal access to effective remedies, including the right to challenge the lawfulness of their detention and expulsion. Kindly include information on existing alternative and less restrictive measures to deprivation of liberty that can be provided to migrants and asylum seekers, including persons who entered the territory 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.

5. Please indicate what measures have been taken by your Excellency's Government to protect the human rights of migrants at international borders, including to ensure the full respect of the principle of non-*refoulement*, the prohibition of arbitrary and collective expulsions and the effective access to asylum and other international protection procedures in the U. S., including of Venezuelan citizens.

6. Please clarify whether individuals who irregularly arrived in Panama, Mexico or the US before 19 October 2022 are eligible to apply for the "Humanitarian Parole Process".

7. In view of the ruling of the District Court of Columbia, please indicate any concrete plans to address human rights concerns relating to Title 42 and to bring the U.S. immigration and border governance policies in line with relevant standards under international human rights and refugee laws, particularly with regard to the rights to seek asylum, the principle of *non-refoulement* and the prohibition of collective expulsions.

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.

A copy of this letter has been transmitted to the Government of Mexico.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

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

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government's 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". Similarly, we would like to recall articles 6 (1), 7 and 9, 10, and 16, read alone and in conjunction with article 2 (3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by United States of America on 8 June 1992, 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).

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 articles 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which the U. S. is a party since 1994. Article 3 of the Convention provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture, ill-treatment or other irreparable harm. 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 characterized by its absolute nature without any exception. 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.

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."

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

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

Furthermore, in General Comment 36 the Human Rights Committee affirms the duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of the Covenant would be violated (para. 30).

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

Furthermore, we would like to bring to your Government's attention article 26 of the ICCPR stating that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

In regards to limitations and derogations of obligations under the ICCPR, we recall the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, which provide guidance to states on derogating from the Covenant in times of public emergency and stipulate that the "severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent." We reiterate that neither the Refugee Convention nor the Convention against Torture allow derogation of the principle of non-*refoulement*, and furthermore, the prohibition of torture and its accompanying

non-*refoulement* principle is considered a peremptory norm of international law. For further information, see the "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol" of the United Nations High Commissioner for Refugees.

We would also like to remind your Government that, according to the **Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**, which the United States ratified in 1994, "racial discrimination" is defined in article 1(1) as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." In addition, article 2 of the Convention requires States to condemn racial discrimination and pursue policies to eliminate it. Further, article 5 of the Convention refers to "the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution." Under these provisions, the equality guarantee of the international human rights framework is substantive, and ICERD therefore requires States Parties to take action to combat both intentional or purposeful racial discrimination as well as *de facto* or unintentional racial discrimination. This interpretation is confirmed by the Committee on the Elimination of Racial Discrimination's authoritative General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination.

Further, 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."

We would also wish to refer to the recent concluding observations of the Committee on the Elimination of Racial Discrimination on the combined tenth to twelfth reports of the United States of America, in which the Committee recommended to "Discontinue the policy of criminally prosecuting non-citizens, including asylum-seekers, for irregular entry; redouble efforts to swiftly repeal

Title 42 and the Migrant Protection Protocols; and provide all non-citizens with sufficient procedural guarantees in the consideration of their applications for international protection" (CERD/C/USA/CO/10-12, para. 52. c).

We also 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).

We also wish to recall the thematic report of the Special Rapporteur on the human rights of migrants on "human rights violations at international borders: trends, prevention and accountability" (A/HRC/50/31), in which he 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 (para. 77). We also wish to highlight that, in this report, the Special Rapporteur 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 (para. 78). He also urged States to refrain from entering into international agreements that would result in human rights violations; and to suspend, cancel and revoke, as necessary, bilateral and multilateral return and readmission agreements which risk violating the prohibition of collective expulsion and the principle of non-refoulement. States should ensure that any such agreement fully respects procedural guarantees to provide an individualized assessment on whether the third country concerned is safe for each migrant subject to return and readmission, and migrant applicants must have the opportunity to challenge whether that country is safe or not in their particular circumstances, so that it does not lead to violations of the human rights of returned migrants (para. 81).

Furthermore, we wish to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objective 7, according to which States have committed to responding to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with their obligations under international law. To fulfil this commitment, States should review relevant policies and practices to ensure that they do not create, exacerbate or unintentionally increase vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, as well as age- and child-sensitive approach; and should establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, regardless of their migration status, with necessary support at all stages of migration, through identification and assistance, as well as protection of

their human rights.

In relation to the alleged detention of migrants and asylum seekers, 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 UDHR and article 9(1) of the ICCPR.

In addition, we would like to draw your Excellency's 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." In this regard, we would like to refer your Excellency's Government to the report of the 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 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).

We also wish to emphasize that the detention of any child for reasons related to 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 wish to refer your Government to the report of the Special Rapporteur on the human rights of migrants on "Ending immigration detention of children and providing adequate care and reception for them" (A/75/183), where the Special Rapporteur provides a set of recommendations to Member States in this regard.

In connection with 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. 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.

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".