

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; 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

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(Please use this reference in your reply)

17 August 2023

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; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; 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 52/20, 51/8, 45/3, 44/5, 50/6, 52/36, 51/15, 44/4, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your attention information we have received concerning the **Strategic and Comprehensive Partnership Framework between the Government of Tunisia and the European Union**, whose future implementation of modalities could give rise to possible violation of the principle of non-refoulement and the human rights of migrants, including children.

According to the information received:

On 16 July 2023, the European Union (EU) announced the signing of a Memorandum of Understanding with the Government of Tunisia, covering a new “Strategic and Comprehensive Partnership Framework” based on five pillars, namely: interpersonal relationships, economic development, investment and trade, renewable energy and migration.¹ The partnership promises technical support and funding of up to one billion euros, of which over €100 million are earmarked for “search and rescue operations, [...] border management, [...] the

¹ [Déclaration à la presse de la Présidente von der Leyen avec le Président tunisien Saïed, le Premier ministre néerlandais Rutte et la Première ministre italienne Meloni.](#)

fight against migrant smuggling and [...] return policy.”² At this stage, the standard operational procedures remain unknown.

The Memorandum of Understanding was signed by European Commissioner for Neighbourhood and Enlargement Olivér Várhelyi and Tunisia’s Secretary of State of the Minister of Foreign Affairs, Migration and Tunisians Abroad, Mounir Ben Rjiba. This follows a meeting held in Tunisia on 11 June 2023³ between the European Commission President Ursula von der Leyen, Tunisian President Kaïs Saïed, Italian Prime Minister Giorgia Meloni and Dutch Prime Minister Mark Rutte in Tunisia. It was reportedly negotiated without input from civil society organisations and allegedly lacks crucial and detailed human rights safeguards.

This new partnership comes in the backdrop of mounting evidence of serious human rights violations and abuses in Tunisia against sub-Saharan African migrants, refugees and asylum seekers, who are amongst the most vulnerable people in the country. It has been reported that consistent and widespread pattern of abuses and violence are perpetrated by governmental authorities, namely the Tunisian police, national guard and coast guard. Sub-Saharan African migrants, refugees and asylum seekers are reportedly subject to increased risk of arbitrary detention, arbitrary displacement, and collective expulsion with no due process and individual assessment measures in place. Additionally, there are concerns that the Tunisian authorities are not in a position to assess protection claims and assist migrants, refugees and asylum seekers in situation of vulnerability and/or with specific needs, such as women, children, elderly, disabled, sick and victims of contemporary forms of slavery and trafficking in persons. Tunisian authorities are reportedly conducting expulsions at the Libyan border at night.

As of 3 August 2023, the death of 24 migrants had been confirmed and at least 350 migrants (197 men and 153 women, including 65 children and 12 pregnant women - 2 of whom are close to delivery) remain displaced at the Tunisian-Libyan border, with very limited or no access to water, food, shelter or basic assistance and are facing life-threatening conditions and extreme heat. Many were displaced from Sfax following unrest in the city, while others were relocated from various urban centres across the country. Disappearances including enforced disappearances and acts tantamount to enforced disappearances attributed to non-State actors – have also been reported in parks in Sfax, where children are taken away by unrelated adults and disappear.

In a recent joint statement, the United Nations Refugee Agency and the International Organization for Migration stressed their deep concern over the recent developments and noted that “search and rescue efforts are urgently needed for those who remain stranded on both sides of the border, and urge for a timely resolution of this situation. This also includes ensuring that those with international protection needs are identified and given the opportunity to seek

² Ibid.

³ [Déclaration à la presse de la Présidente von der Leyen avec la Première ministre italienne Meloni, le Premier ministre néerlandais Rutte et le Président tunisien Saïed.](#)

asylum, and vulnerable migrants, including victims of trafficking and unaccompanied children, must be referred to appropriate services.”⁴

Up until 8 July 2023, humanitarian organisations were unable to access, intervene and support migrants, refugees and asylum seekers in the militarized zones. The Tunisian Red Crescent had access to the border area on the Tunisian side and was able to evacuate 633 migrants and transfer 4 migrants to hospital, including 2 women (1 pregnant). The Government of Tunisia appears to have deferred in full its full responsibility of humanitarian assistance to Tunisian Red Crescent, that does not have the capacity to respond and provide durable solutions to all of the wide-ranging needs on the ground. Allegedly, Tunisian activists and human rights defenders, who were accused of supporting irregular migration, when instead they were providing humanitarian assistance, were harassed and arrested by the Tunisian authorities.

Moreover, there have also been numerous reports of excessive use of force, physical violence, assault, intimidation, extortion, torture, ill-treatment, disappearances, trafficking in persons, forced labour, forced evictions, arbitrary displacement, sexual exploitation and other contemporary forms of slavery of sub-Saharan African migrants, refugees and asylum seekers, with the direct or indirect – by omission – involvement of Tunisian authorities and private actors, with no investigations or protection provided by law enforcement agencies. While being expelled to the Tunisian-Libyan militarised borders, several migrants attempted to re-enter Tunisia but were reportedly beaten with sticks and pipes. According to the information received, some had their bones broken. Tunisian authorities reportedly confiscated migrants’ ID’s and destroyed their cell phones. They also allegedly promised to take migrants to a safe place but instead deceived and deported them in desert areas with no access to basic services, including food, water, hygiene kits, clothing, footwear, diapers, blankets and tents to protect them from high or low temperatures. Allegedly, medical support is urgently needed for a large number of migrants, refugees and asylum seekers whose state of health is critical, due to dehydration, hyperthermia and physical injuries.

There have also been allegations of migrant, refugee and asylum-seeking women being sexually harassed and facing sexual and gender-based violence, including rape. Also, migrant, refugee and asylum-seeking women, who were forcibly evicted and arbitrarily displaced and are currently in parks in Sfax, lack access to feminine hygiene products and children have not been provided with milk and diapers.

A number of sub-Saharan African migrants, refugees and asylum seekers, who were expelled and stranded at the Tunisian-Libyan border zone by the authorities, were evacuated and placed in shelters in Tunisia which appear to be considered as de facto detention facilities that fail to adhere to any international legal standards, with migrants struggling in overcrowded conditions, lacking access to water, food, toilets, sanitary products and washing facilities. Additionally, the announced “temporary” accommodation of migrants within

⁴ See <https://www.unhcr.org/news/press-releases/unhcr-and-iom-appeal-urgent-solutions-refugees-and-migrants-stranded-tunisia>.

shelters or public spaces has generated hostile reactions and xenophobia by host communities, notably in Ben Gardane, where the local section of the workers' union (UGTT) publicly opposed the accommodation of migrants within a secondary school. Some migrants are reportedly living without any shelter in parks, under scorching temperatures exceeding 40 degrees. Allegedly, they are reportedly put on display in parks that are in the middle of city centres, thus risking additional tensions with host communities.

Furthermore, anti-migrant sentiment and attitude has been reportedly increasing within the country. Reported acts of racial discrimination against migrants include refusal to access shops, healthcare services, and public transportation as well as being charged twice for products such as a bottle of water.

On 4 April 2023, the United Nations Committee on the Elimination of Racial Discrimination (CERD) issued an early warning calling on the highest Tunisian authorities to publicly condemn and distance themselves from racist hate speech by politicians, public and private figures.⁵ In the face of the racial discrimination and violent racist attacks that followed the Tunisian head of state's remarks, hundreds of sub-Saharan African migrants reportedly fled the country or were forcibly displaced and evicted from their homes or lost their jobs. Some have sought protection and assistance from the International Organisation for Migration and the United Nations Refugee Agency. The Committee asked the Tunisian Government to investigate reported acts of violence and cases of migrants arbitrarily removed from their jobs or displaced from their homes, and to ensure that victims have access to justice and effective remedies.

On 18 July 2023, several UN experts expressed similar concerns about Tunisia's alleged discriminatory treatment of sub-Saharan migrants, and called on the authorities to take urgent measures to end collective expulsions and protect the human rights of all migrants.⁶

In addition, concerns are raised with regard to an assisted voluntary returns programme, as migrants' protection needs may be easily overlooked and/or they could face refoulement to places where they are at risk of torture or other cruel and inhuman and degrading treatment, or of enforced disappearance. There have been reports that some migrants were requested to sign forms in Arabic which they did not understand.

The number of interceptions and pullbacks by the Tunisian Coast Guard has reportedly increased enormously in recent years. Since 2023, roughly 32,792 people were prevented from leaving Tunisia by sea and were violently returned and 608 persons went missing and their fate and whereabouts remain unknown. Earlier this year, around 30 persons onboard a boat in distress were intercepted by the Tunisian Coast Guard in the Maltese search and rescue zone, raising into question respect for the principles set out in the Guidelines on the Treatment of Persons Rescued at Sea and the Convention for the Safety of Life at Sea.

⁵ [Tunisia must immediately stop hate speech and violence against migrants from south of Sahara, UN Committee issues early warning | OHCHR.](#)

⁶ [UN experts urge Tunisia to act swiftly to uphold migrants' rights | OHCHR.](#)

The externalisation of borders and migration controls has become a central part of the EU's response to migration management. The decision to enter a memorandum of understanding in absence of migrants' protection-related guarantees and comprehensive human rights protection shows no regard to the repressive behaviours within the country and lessons learned from previous similar agreements and practices.⁷ Instead, the outsourcing of migration governance policies as well as the political and financial incentives of the agreement may put fundamental human rights at risk. For instance, there are no clear guidelines in ensuring that the financial or material support provided by the EU to the Government of Tunisia will not support – directly or indirectly – human rights violations and reach entities responsible for those human rights breaches.

Given this background, the EU shoulders responsibility for the prevention of violations of the fundamental rights of migrants, refugees and asylum seekers in Tunisia. Especially, given the Government of Tunisia's clear position that "it is not a country of settlement of irregular migrants."⁸ According to IOM, the Central Mediterranean route remains the world's most dangerous maritime crossing with over 400 deaths recorded in between January and March 2023, making it the deadliest first quarter on record since 2017.⁹

On 17 July 2023, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, noted that the recent migration agreement with Tunisia "only includes very general language on human rights, and no concrete indication of whether safeguards would be put in place or what those would be [...] Such safeguards should include, at a minimum, the publication of a comprehensive human rights risk assessment, full transparency in the provision of funding, the setting up of independent monitoring mechanisms to assess the human rights impact of specific activities under the agreement, and the ability to suspend any activities found to be negatively impacting on the human rights of refugees, asylum seekers and migrants. Failure to establish clear and concrete safeguards in migration co-operation activities will only add to the worrying trend of human rights being sacrificed to European states' attempts to externalise their responsibilities."¹⁰ Members of the European Parliament have also strongly criticised this deal as it ignores human rights concerns and the country's democratic backsliding.

The agreement between the EU and the Government of Tunisia follows the "EU Action Plan on the Central Mediterranean"¹¹ and the "Operational Strategy for more effective returns"¹² presented respectively by the EU Commission in November 2022 and January 2023.

⁷ See [OL OTH 64/2018](#); [OL OTH 4/2017](#); [OL OTH 3/2017](#) and [New EU recommendation on return procedures a "slippery slope" to solve European migration challenges – UN experts | OHCHR](#).

⁸ [Mémorandum d'entente sur un partenariat stratégique et global entre l'Union européenne et la Tunisie](#).

⁹ UN Press Statement, [Central Mediterranean: Deadliest first quarter for migrant deaths in six years](#).

¹⁰ See <https://www.coe.int/en/web/commissioner/-/european-states-migration-co-operation-with-tunisia-should-be-subject-to-clear-human-rights-safeguards>.

¹¹ [EU Commission, Action Plan for the Central Mediterranean](#)

¹² [EU Commission, Towards an operational strategy for more effective returns](#).

Some EU member politicians have repeatedly proposed various migration partnerships concerning Tunisia, including offshore processing centres, as well as agreements that could allow the return of third-country nationals who have transited through Tunisia. Thus, watering down the human rights safeguards enshrined in the concept of “safe third country” as well as the nexus that should exist between an individual and a “safe third country” to consider that his/her return to this country would be reasonable. Concerns are raised as “transit” could be considered enough to qualify the “connection” under article 38 of the Recast Asylum Directive. The EU Parliament has raised concerns over “the quantitative approach to returns and calls for paying sufficient attention to the reception conditions in the concerned countries and to the need for adequate support to local economies.”¹³

Between 2014 and 2020, the EU allocated €93.5 million to the Government of Tunisia from its “Emergency Trust Fund for Africa” (EUTF), which aims to assist the Government of Tunisia in the implementation of the priorities of the National Strategy on Migration.¹⁴ These include providing social and economic assistance to Tunisian returnees through a ‘National Mechanism of Reintegration’ (Tounesna); supporting Tunisia in the development of an Integrated Border Management system; and supporting Tunisia in its Labour Migration Governance.¹⁵

A draft action plan for the Government of Tunisia prepared by the European Commission, dated 3 February 2022, stated that EU intended to further fund the Government of Tunisia up to €85 million in 2021 – 2022.¹⁶ Of the €85 million, €25 million will be allocated for border management; €6-10 million for migration governance; around €5 million for voluntary returns to and from Tunisia; multi-country actions worth €20-25 million in the area of legal migration; and €12-20 million for the fight against human trafficking and smuggling of migrants.¹⁷ These migration-related projects include strengthening the Tunisian *Garde Nationale Maritime* (Coast Guard) and providing equipment and training for officers of the Internal Security Forces, as well as the Tunisian Customs.¹⁸

The 2022 draft action plan also details the significant bilateral support provided to the Government of Tunisia by Austria, Belgium, Denmark, France, Germany, Italy and other EU member States. Areas of border management, coastal control, search and rescue were identified, among others.

The EU's Multi-Annual Indicative Programme for a Multi-Country Programme on Migration for the Southern Neighbourhood (2021-2027), which includes Tunisia, has positive elements such as support for the development of adequate legislation and rights-based asylum and migration policies; legal channels for

¹³ [European Parliament, The external dimension of the new pact on migration and asylum: A focus on prevention and readmission.](#)

¹⁴ See <https://www.statewatch.org/media/3331/eu-com-migration-external-cooperation-initiatives-9132-22.pdf>.

¹⁵ Ibid.

¹⁶ [Council of the European Union, Draft Action Plan: Tunisia, Operationalization of the Pact – Action plans for strengthening.](#)

¹⁷ Ibid.

¹⁸ Ibid.

migration; and engagement with civil society organisations.¹⁹ However, the agreements and projects remain heavily focused on supporting “law enforcement cooperation” and “border control management”. In addition, the project indicators listed are extremely problematic as they mistakenly equate interceptions and rescues at sea as the same objective – namely indicators 3.3.1 and indicator 3.3.2 - “number of migrants intercepted/rescued through search and rescue operations at sea and on land.”²⁰

While we do not wish to prejudge the accuracy of these allegations, we wish to express our heightened concern over the possible human rights implications of the signed memorandum of understanding to strengthen the Tunisian authorities’ capacity and performance. Given the allegations of systemic gross human rights violations and abuses perpetrated against migrants, refugees and asylum-seekers across the country, including reported violations of the right to life and disappearances, we are concerned that eventual cooperation would contribute to the pervasive and consistent patterns of human rights violations against these groups of persons in Tunisia.

In particular, we are concerned that strengthening activities and projects that would increase the interception of migrants at sea and their unlawful return to Tunisia and unsafe third countries, where they are at risk of persecution and being subjected to violations of their right to life, torture and other ill-treatment, trafficking in persons, and disappearances would constitute a violation of the principle of non-refoulement. These practices would violate international legal obligations, including the principle of non-refoulement, applicable by virtue of treaty-based and customary law, and forming part of *jus cogens*. In this regard, we further wish to highlight that the right to life constitutes a norm of *jus cogens* and customary international law from which no derogation is permitted under any circumstances. Further, we highlight the obligations on the State to identify, assist and protect victims of trafficking, including for purposes of forced labour and sexual exploitation, and persons at risk of trafficking, without discrimination, including during interceptions at sea.

In light of allegations that migrants may be subject to disappearances, including enforced disappearances, in Tunisia, we underscore that the prohibition of enforced disappearance has also attained the status of *jus cogens*, and article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance and article 16 of the International Convention on the Protection of All Persons from Enforced Disappearance, which enshrines customary international law, establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that this person would be in danger of enforced disappearance.

We further express concern that the Strategic and Comprehensive Partnership Framework between the Government of Tunisia and the EU has allegedly been negotiated without input from civil society organisations and would lack crucial and sound human rights safeguards.

Furthermore, we wish to express concern over the apparent absence of an adequate assessment of the human rights implications of such measures, despite the

¹⁹ [European Commission, Multi-Annual Indicative Programme for a Multi-Country Migration \(2021 - 2027\).](#)

²⁰ Ibid.

absence of a national asylum law and robust evidence that Tunisia does not appear to meet the criteria to be considered a place of safety for migrants, refugees and asylum-seekers.

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures are taken or foreseen to protect the human rights of migrants, refugees and asylum seekers, including by ensuring their access to legal representatives and relevant procedures for persons in need of protection under international human rights and refugee law and implementing relevant safeguards against possible violations of their right to life and against potential disappearances in Tunisia, or against such practice as a result of their deportation or refoulement to neighboring countries and/or countries of origin.
3. Please provide information on the measures and precautions taken to ensure that any agreement signed with the Government of Tunisia is in accordance with European Member States' obligations under international law.
4. Please explain whether any analysis and/or consultation has been undertaken to assess the impact such a framework has on the human rights of migrants, asylum seekers, refugees as well as victims of trafficking and those at risk of trafficking from among them. Please share the outcome of any such analysis or consultation.
5. Please explain what measures are being put in place to guarantee access to legal protection and effective remedies, including the right to challenge the lawfulness of their detention and expulsion orders.
6. Please explain what measures are in place or envisaged to ensure that victims of contemporary forms of slavery and trafficking in persons are identified among migrant populations and provided with protection, assistance, and access to remedy.
7. Please explain what measures are in place to investigate and hold perpetrators accountable for the arbitrary displacement and forced eviction of migrants, refugees, and asylum-seekers from their homes and places of habitual residence, provide protection and assistance to those displaced including to ensure an adequate standard of living, and facilitate their access to remedy and durable solutions.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from the European Union 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 persons 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 the European Union to clarify the issue/s in question.

Please note that a letter expressing similar concerns was sent to the Government of Tunisia. A copy of this communication has also been sent to the Governments of the Kingdom of the Netherlands, Italy and State of Libya.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Aua Baldé
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K.P. Ashwini
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xenophobia and related intolerance

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consequences

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

Dorothy Estrada-Tanck

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

Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in article 3 of the **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under the 1951 Refugee Convention or domestic law. Accordingly, *non-refoulement* under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed. Like the Refugee Convention, the CAT requires individualized status determinations carried out via due process of law—under neither instrument is it permissible to forcibly expel migrants without allowing them to pursue asylum or *non-refoulement* claims.

The prohibition of torture and other Cruel, Inhuman or Degrading Treatment or Punishment is also enshrined in **article 3 of the European Convention on Human Rights (ECHR)**. Furthermore, the ECHR states that its article 3 is not subject to any exceptions or to derogations and it must be upheld even “in time of war or other public emergency threatening the life of a nation” (**art. 15 (2) ECHR**), and it leaves no scope for limitations by law under any circumstances, whether they be safety, public order or other grounds.

The **International Convention for the Protection of All Persons from Enforced Disappearance** establishes that no one shall be subject to enforced disappearance, which is considered to be the “arrest, detention, abduction or any other

form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". It further specifies in Article 16, that no State Party shall 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. We would further refer to the **Declaration on the Protection of All Persons from Enforced Disappearance**, adopted by General Assembly resolution 47/133 on 18 December 1992, in particular to article 8, which enshrines customary international law, establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that this person would be in danger of enforced disappearance. We also refer to articles 2, 3, 9, 13, and 19. In its Report on Enforced or Involuntary Disappearances in the Context of Migration (A/HRC/36/39/Add.2), the Working Group on Enforced or Involuntary Disappearances recalled that failure to identify and investigate cases of disappearance of migrants may engage the responsibility of the State, as they may constitute practices tantamount to disappearances or facilitate disappearances because they make it very difficult to search for or identify disappeared persons (para. 44).

We would also like to draw your attention to paragraph 16 of the **Resolution A/RES/65/205 of the UN General Assembly** which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Moreover, the **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions** (principle 5) 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. We further refer to the obligation not to extradite, expel or otherwise transfer in article 6 of the ICCPR, which is broader in scope than the principle of non-refoulement in international refugee law, as it may also require the protection of aliens not entitled to refugee status. Therefore, the principle of non-refoulement under international human rights law applies to any form of removal or transfer of persons regardless of their legal status.

We draw the attention 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.

With regards to search and rescue operations, we would also like to refer to principle 4 of **OHCHR Principles and Guidelines on the human rights protection of migrants** in vulnerable situations, according to which States should protect the lives

and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance. This includes, among others, to (1) ensure that relevant national legal frameworks as well as arrangements for cooperation and coordination between States uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international human rights and refugee law, the international law of the sea, and other relevant standards; (2) to establish, operate and maintain adequate and effective services for search and rescue at sea regardless of presumed nationality or legal status of migrants who are in distress at sea or the circumstances in which they are found; (3) to ensure that search and rescue services and coordinating authorities operate under a broad understanding of distress, so that timely and necessary assistance is provided to migrants in unseaworthy vessels even if they are not in immediate danger of sinking; (4) to ensure that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses including proactive patrolling when informed risk assessments suggest that migrants who may require assistance are likely to be present along a particular sea route; (5) to make every effort to protect migrants' right to life, wherever they are at risk on water or on land; (6) to ensure that rescue services are adequately resourced and provided with all necessary equipment such as rescue beacons; and (7) to avoid acts and inaction that are likely or expected to cause the unnatural or premature death of migrants, or deny them a dignified existence.

We wish to refer to the **Global Compact for Safe, Orderly and Regular Migration** (A/RES/73/195), in particular to objective 7, according to which States commit to respond 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 obligations under international law. In addition, **objective 7 (g)** refers to the commitment of States to “ensure that migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that all migrants, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory”.

We also wish to draw your attention to **objective 8** (principle 24) according to which States should cooperate to save lives and prevent migrant deaths and injuries through individual and joint search and rescue operations, standardised collection and exchange of relevant information, assuming collective responsibility to preserve the lives of migrants, in accordance with international law. Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through **objective 13**.

We would like to draw your attention to the **Guiding Principles on Internal Displacement**, which applies in instances where persons or groups of persons have been displaced from their homes or places of habitual residence. Furthermore, they apply without discrimination, including on the basis of race and national, ethnic, or social origin (principle 4). Every individual has the right to be protected against being arbitrarily displaced from their home or place of habitual residence (principle 6), and arbitrary displacement is prohibited when it is used as a form of collective punishment (principle 6(2e)). Prior to any decision requiring the displacement of persons, all possible alternatives should be explored and all measures taken to minimize

displacement (principle 7(1)). Those displaced should be provided with proper accommodation and displacement should be carried out in satisfactory conditions of safety, nutrition, health, and hygiene (principle 7(2)). Displacement should not be carried out in a manner that violates the rights to life, dignity, liberty, and security of those affected (principle 8)).

Internally displaced persons should be protected from summary or arbitrary executions, enforced disappearances, attacks or other acts of violence (principle 10) as well as against cruel, inhuman, or degrading treatment or punishment, contemporary forms of slavery and acts intended to spread terror (principle 11). Internally displaced persons have the right to liberty of movement and freedom to choose their residence (principle 14). All internally displaced persons have the right to an adequate standard of living including essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation (principle 18).

We draw your attention to the obligation of non-refoulement as stated in article 14(1) of the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime, the principle of non-discrimination as stated in article 14(2), and to article 6, on assistance to and protection of victims of trafficking in persons.

We draw your attention to the obligations arising under article 8 ICCPR, article 6 CEDAW, and articles 5 and 6 CERD, towards victims of trafficking and persons at risk of trafficking.

Further, we highlight the obligation to assist and protect victims of trafficking, arising under article 4 of the European Convention on Human Rights.

We refer to the Report of the Special Rapporteur on trafficking in persons, especially women and children, which states that trafficking in persons may constitute torture. (A/HRC/53/28, (para. 35)) We also draw your attention to the **Committee against Torture general comment No. 4 (2017)**, which provides a non-exhaustive list of human rights situations that may constitute an indication of risk of torture, to which the principle of non-refoulement should be applied. This includes the risk of being subjected to slavery and forced labour or trafficking in human beings (para. 29 (n)).

Further we refer to the positive obligations to identify and protect victims of trafficking or persons at risk of trafficking, in the context of interceptions at sea, and in the context of duties to rescue persons in distress at sea (A/HRC/53/28, para. 39).

We recall that trafficking in persons comes within the international law concept of persecution. In its **General Recommendation no. 38**, the Committee on the Elimination of All Forms of Discrimination against Women recommended that States recognize that trafficking “is part and parcel of gender-related persecution,” (A/HRC/53/28, para. 45).

Further we recall the obligation under article 2 of the **Convention on the Rights of the Child (CRC)**, to respect and ensure the rights of all children without discrimination of any kind. (article 2). The Special Rapporteur on trafficking in persons

has highlighted that the protection of the rights of the child in the context of any removal or transfer proceedings must be ensured (A/HRC/53/28, para. 67). The Convention on the Rights of the Child provides that: “[...] non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non- State actors or whether such violations are directly intended or are the indirect consequence of States parties’ action or inaction.” (CMW/C/GC/3-CRC/C/GC/22 Joint general comment No. 3 / No. 22 (2017, paras. 19 and 46).

Further, we refer to the Report of the Special Rapporteur on trafficking in persons, especially women and children, “A good- faith duty of cooperation and responsibility-sharing is at the core of the 1951 Convention relating to the Status of Refugees and 1967 the Protocol thereto, and is reinforced by the fundamental principles of humanity and international solidarity underpinning the Global Refugee Compact on Refugees (at para. 5). The obligation to prevent trafficking in persons and protect victims of trafficking, is undermined by measures that restrict access to asylum, or that impose punitive measures on asylum- seekers entering a country arriving irregularly. Measures to shift and transfer responsibility for the reception of asylum- seekers and the determination of asylum claims, raise many serious human rights concerns, and questions of compatibility with international law, including obligations to identify, assist and protect victims of trafficking or persons at risk of trafficking, who are seeking asylum.

The Special Rapporteur has highlighted specific concerns in relation to arrangements to transfer asylum- seekers to third States. Such practices may not comply with States’ obligations to identify, assist and protect victims of trafficking, or persons at risk of trafficking, or to ensure effective protection against refoulement. The Special Rapporteur has also highlighted that such arrangements may breach obligations arising under international human rights law, to investigate trafficking in persons without delay and to take operational measures to protect potential victims, where there are sufficient indicators available of circumstances which give rise to a credible suspicion of a real risk of trafficking. Such arrangements may breach the positive obligation on States to put in place an effective system to protect potential or confirmed victims of trafficking, if they are carried out in the absence of an individualized and procedurally fair assessments of (a) the safety and dignity of removals or transfers to other States, and (b) the real risk of a breach of international human rights law in third States, or of onward refoulement or re-trafficking.

The Special Rapporteur highlights the obligation of non-refoulement, which is of particular relevance to protection obligations due to victims of trafficking or persons at risk of trafficking.”

We would also like to refer to articles 2, 6, 7, 9, 12, 16, 17, 19, 24 and 26 of the **International Covenant on Civil and Political Rights (ICCPR)**, which provide for the rights to an effective remedy, to life, to freedom from torture and ill-treatment, to liberty and security of person, to leave any country, including one’s own, not to be subjected to arbitrary or unlawful interference with his or her family life, to seek and receive information, to benefit from the protective measures required by his or her status as a minor, and to equal protection of the law without any discrimination. In this respect, we wish to emphasize that the enjoyment of the rights guaranteed by the ICCPR is not

limited to citizens of States parties, but “must also be available to all individuals, regardless of 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” (CCPR/C/21/Rev.1/Add.13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. In this regard, we wish to draw your attention to the Working Group on Arbitrary Detention’s Revised Deliberation no. 5, in which it emphasizes that any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording their claims or initial verification of identity if in doubt. The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows. Further, any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority. Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority, before which they should have access to automatic, regular periodic reviews of their detention to ensure that it remains necessary, proportional, lawful and non-arbitrary.²¹

We wish to bring your attention to article 2 (1) of the ICCPR, which makes clear that State parties should ensure that all provisions of the Covenant, including articles 6, are upheld without distinction of any kind, including race. Moreover article 2 (3) of the ICCPR establishes that victims of violations of rights under the Covenant are entitled to access remedy, as determined by competent judicial, administrative or legislative authorities.

Paragraph 1 of article 6 of the ICCPR provides that **no one shall be arbitrarily deprived of life** and that this right shall be protected by law. Accordingly, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life; and must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. We recall that States must prevent the arbitrary deprivation of life, in particular by establishing an appropriate framework of laws, institutions and procedures. States must respect the right to life by ensuring that their organs and agents do not arbitrarily deprive anyone of their life (A/73/314, paragraph 16). In this respect, we recall that arbitrariness can be inferred from laws and practices that violate the principle of non-discrimination, and which may be unnecessary and disproportionate (see A/HRC/35/23, paragraph 33). Any deprivation of life based on discrimination in law or practice is ipso facto arbitrary in nature. We also emphasize that deliberate intent on the part of the State is not necessary for a killing or deprivation of life to be considered arbitrary (ibid., paragraph 34).

We stress that the right to life implies important duties of care on the part of States, including the provision of immediate assistance in situations of acute distress at sea that could endanger the lives of passengers (A/72/335, para. 61). Where officers deliberately and knowingly place migrants in a situation where they risk being killed or

²¹ A/HRC/39/45, Annex.

their lives endangered due to environmental conditions, this may constitute excessive use of force (ibid., para. 33).

The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/41/36, para. 33) emphasizes that one's immigration status has no bearing on the responsibility of States to protect individuals against foreseeable threats to their lives, security and integrity. States are duty-bound to be attentive to the vulnerability of individuals whose lives may be particularly at risk because of their activities or identity.

We further refer to **General Comment No. 36**. In its paragraph 23, it states that “The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence”, including children, particularly unaccompanied minors. The Human Rights Committee further clarifies that the State's duty to protect applies to all persons within its jurisdiction, that is, all persons whose enjoyment of the right to life depends on its power or effective control. States parties are obliged to respect and protect the lives of all persons on board ships carrying their flag, as well as those of persons in distress at sea, in accordance with their international obligations regarding rescue at sea (paragraph 63).

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*.” You 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, para. 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.”

Article 13 of the ICCPR provides that “[a]n alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” In addition, the Human Rights Committee has reaffirmed this principle in its **General Comment No. 15**, paragraphs 9 and 10.

Article 24 of the ICCPR states that “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” We also refer to the provisions of the **Convention on the Rights of the Child**, in particular articles 2 and 6.

Furthermore, we would like to bring to your 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.”

Furthermore, in **General Comment No. 31**, the Committee observed that there is a positive obligation on States parties to ensure the protection of the rights of individuals under the Covenant against violations committed by their own security forces, including border guards (CCPR/C/21/Rev.1/Add. 13, para. 8).

We would like to draw attention to the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

We would also like to remind that, according to the **Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**, “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 you 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.

With regard to women's rights, we would like to remind that States have an obligation to ensure that women can exercise their economic and social rights. 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), that defines gender-based violence against women as any act that impairs or nullifies women's enjoyment 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 committed by a public official or private individual, in public or private life. We would also like to refer to CEDAW's General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration. While migration can offer new opportunities for women and can empower them economically through greater participation, it can also undermine the enjoyment of their human rights and security.

We also wish to refer you to the **Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210)**, or the “Istanbul Convention,” which was ratified by the European Union on 28 June 2023. The Istanbul Convention aims to protect women and girls from gender-based violence, which is recognized as a form of persecution and serious harm requiring complementary protection. The Convention also prohibits discrimination on the grounds of migrant or refugee status in implementing its provisions (article 4, para. 3). The aforementioned article states that States parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of article 1A(2) of the 1951 Convention relating to the Status of Refugees and as a form of serious harm requiring complementary and subsidiary protection. States parties must also take the necessary legislative and other measures to develop gender-sensitive reception procedures and support services for asylum-seekers. Article 61 also imposes the obligation to respect the principle of non-refoulement, in accordance with existing obligations under international law.

The Working Group on Discrimination against Women and Girls has analysed the main transformations taking place in the world of work, from a gender perspective, and has noted that women migrant domestic workers are often doubly marginalised: as migrants employed in the informal sector, they live in precarious conditions and are more likely to have their wages stolen or to be victims of violence, harassment and

abuse. For migrant domestic workers and carers, gender discrimination is compounded by other forms of discrimination, based on legal status, ethnicity, race, class or caste. They may also be victims of human rights violations in their countries of origin, where they risk being exploited by intermediaries. The experts recommended eliminating all forms of discrimination against women migrant workers, including in migration policies and legislation, particularly in labour law, and introducing legal protection against the exploitation of migrant women (A/HRC/44/51).

In its report on women deprived of their liberty (A/HRC/41/33), the Working Group on Discrimination against Women and Girls noted that discrimination and stereotyping can also result in the rejection of women's asylum claims, thereby increasing the risk of women being placed in migrant detention centres or imprisoned for immigration offences. For example, in some legal systems, asylum applications must be submitted by a man, as head of the family; women are not allowed to apply for asylum in their own right, and immigration judges, because of gender bias, can be harsher on women. Gender stereotypes are also reflected in the legal frameworks used by immigration services, which disregard violence, in particular domestic violence, of which a woman asylum seeker may have been a victim, in the decision to grant asylum. The particular attention paid by the police to certain populations because of racial and ethnic prejudices puts some women at risk when these prejudices are combined with sexist prejudices.

The **Universal Declaration of Human Rights** (UDHR), adopted by the General Assembly of the United Nations on 10 December 1948, is a key component of international standards regarding the elimination of all forms of slavery. Article 4 states that “no one shall be subjected to slavery or servitude, slavery and slave trade are prohibited in all its forms.”

We would like to refer to the **Slavery Convention of 1926**, which calls for the complete abolition of slavery in all its forms and to article 4 of the Universal Declaration of Human Rights which states that "No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms". We would also like to recall article 5 of the Slavery Convention which calls upon States to take appropriate measures to prevent forced or compulsory labor involving conditions similar to slavery.

We would also like to refer to the provisions of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (**the Palermo Protocol**). Its article 8 (2) states: When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall be preferably be voluntary. Reference is further made to article 6 of The Protocol concerning assistance to and protection of victims of trafficking in persons. The Article provides, in particular, that in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care, is taken into account.

We would also like to bring to your attention article 7 which specifies that in addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. Moreover, that in implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

We also refer to the **Declaration on the Protection of All Persons from Enforced Disappearance**, adopted by General Assembly resolution 47/133 on 18 December 1992, in particular article 2, 3, 9, 13, and 19. In its Report on Enforced or Involuntary Disappearances in the Context of Migration (A/HRC/36/39/Add.2), the Working Group on Enforced or Involuntary Disappearances recalled that failure to identify and investigate cases of disappearance of migrants may engage the responsibility of the State, as they may constitute practices tantamount to disappearances or facilitate disappearances because they make it very difficult to search for or identify disappeared persons (para. 44).

We further refer to the aforementioned **General Comment No. 36**, in which the Human Rights Committee recalled that enforced disappearance constitutes a unique and integrated set of acts and omissions that constitute a grave threat to life and that States Parties to the ICCPR must take adequate measures to prevent enforced disappearances and ensure that prompt and effective investigations are conducted to determine the fate and whereabouts of any person who may have been subjected to enforced disappearance (CCPR/C/GC/36, para. 58).

In this regard, we refer to the **Guiding Principles on the Search for Disappeared Persons** by the Committee on Enforced Disappearances in 2019.²² In particular, we highlight principle 2.4, which states that the body or remains of a missing person must be handed over to family members in decent conditions; principle 7.3, which states that the search for a missing person must continue until his or her fate and/or whereabouts have been determined with certainty; principle 9.1, which states that states must take specific coordinated measures to prevent disappearances in the context of the particular vulnerability of missing persons, and principle 9.2, that and principle 13, which stipulates that the search for the disappeared and the criminal investigation of those responsible for the disappearance must be mutually reinforcing.

We also refer to the **General Comment on Children and Enforced Disappearances** (A/HRC/WGEID/98/1) which states that children, because of their particularly vulnerable status as child victims of enforced disappearance or as relatives of a disappeared person, need enhanced protection and that States should develop a comprehensive strategy to prevent and respond to enforced disappearances of children and should pay particular attention to the prompt resolution of cases involving child victims of enforced disappearance. We also recall the **General Comment on women affected by enforced disappearances** (A/HRC/WGEID/98/2), which states that a gender perspective should be incorporated into all measures, including legislative,

²² CED/C/7.

administrative, judicial and other measures, taken by States when dealing with enforced disappearances.

We wish to refer 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 would also like to draw your attention to the report on human rights violations at international borders: trends, prevention and accountability by the Special Rapporteur on the human rights of migrants (A/HRC/50/31). In particular, the Special Rapporteur notes that States should redouble their efforts to adopt a human rights-based, gender-sensitive, age-appropriate and child-sensitive approach to migration and border management, ensuring that the human rights of migrants, including irregular migrants, are always the first consideration.

Also, in his report on responding to the human rights consequences of measures to return migrants by land and sea, the Special Rapporteur on the human rights of migrants urges States to ensure that the use of force and firearms by border authorities is strictly regulated in accordance with international standards, and to ensure that any allegations of misuse are promptly investigated and appropriately prosecuted; to implement measures in the best interests of children, taking precedence over migration management objectives; to cooperate internationally to protect the lives and safety of migrants on land and at sea, and to ensure that migrants rescued at sea are promptly taken to a port recognized by the international community as safe, and have access to individual procedures and adequate care; to provide effective access to mechanisms enabling migrants who have suffered human rights violations or abuses as a result of border management measures to seek redress and redress, including by establishing accessible and adequate complaints and redress procedures, and by refraining from imposing territorial or other restrictions that effectively prevent claimants from accessing justice.

Concerning the deportation of children of migrants, it is essential to respect the best interests of the child in such procedure. We would also like to direct attention to the report of the Special Rapporteur on the human rights of migrants, concerning border “pushbacks” of migrants (A/HRC/47/30, para. 40) and his report (A/76/257), which reiterates in paragraph 49 that even during states of emergency, “non-derogable rights must be respected, and ... measures need to be in conformity with other international obligations, including the principles of non-discrimination, *non-refoulement* and the prohibition of collective expulsions.”

We would like to draw your attention to the report on Unlawful deaths of refugees and migrants by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/72/335). In particular, the Special Rapporteur notes that “unlawful deaths of refugees and migrants involving the responsibility of the State or non-State actors all too rarely trigger thorough investigations” and that “death, seen as an inherent risk of clandestine travel, seems to be tolerated” (para. 50). According to the Special Rapporteur, “the absence of investigations into these illegal deaths has the effect of limiting our understanding of the modalities of trafficking and migratory networks” (para. 51). It is also recalled that “When the identity of a deceased person has been

established, the State must immediately inform the next of kin and provide a death notice in an accessible manner. At the end of the investigation procedures, the remains and property of the deceased must be returned to the family members" (para. 72) and that "When repatriation or return of the remains to the family members or next of kin is impossible, States are obliged to provide a dignified and respectful burial" (para. 75). Families have the right to know where a loved one is buried (para. 76). "States must ensure that refugees and migrants and their families have access to effective remedies, adequate, effective and prompt reparation for harm suffered and relevant information concerning the unlawful death and the location of the remains." (paragraph 103). The Human Rights Committee found that a State had violated article 6 (1) of the Covenant due to negligent acts and omissions of the State in rescue activities at sea, which endangered lives and led to the death or disappearance of persons due to the lack of prompt response to distress calls (paragraph 8.2). The Human Rights Committee also found that the lengthy duration of ongoing national investigative procedures and the lack of foresight as to their conclusion constituted a failure to conduct a prompt investigation into alleged violations of the right to life, resulting in a violation of the State's obligations under article 6 (1) read in conjunction with article 2 (3) of the Covenant (para 8.7).

Failure to investigate and prosecute such violations is in itself a violation of human rights treaty standards. Such failures lead to impunity, which can encourage the repetition of crimes by others in subsequent incidents (**General Comment 31**, paragraphs 15 and 18).

The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (**A/HRC/41/36, para. 33**) emphasizes that one's immigration status has no bearing on the responsibility of States to protect individuals against foreseeable threats to their lives, security and integrity. States are duty-bound to be attentive to the vulnerability of individuals whose lives may be particularly at risk because of their activities or identity.

For further detail on the intersection of the international equality framework and immigration, we encourage you 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**).