

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the situation of human rights in Afghanistan; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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)

30 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the situation of human rights in Afghanistan; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 49/10, 54/1, 52/10, 52/20, 49/5, 53/9, 50/7 and 50/18.

In this connection, we would like to bring to your attention concerns in relation to ‘**The Illegal Foreigners Repatriation Plan (IFRP)**’ adopted by your Excellency’s Government. Specifically, we wish to highlight concerns in relation to the Plan’s compliance with the customary international law principle of non-refoulement and the State’s obligation to ensure protection against refoulement, including serious risks of trafficking or re-trafficking, particularly for women and children.

According to the information received:

On 26 September 2023, “The Illegal Foreigners’ Repatriation Plan” was issued internally by the Ministry of the Interior, outlining the “repatriation” of Afghan nationals in three phases, starting with undocumented Afghan nationals, then followed by Afghan Citizen Card (ACC) holders and Proof of Registration (PoR) holders.

On 3 October 2023, a formal announcement was issued by the Ministry of the Interior, stating the deadline of 1 November 2023 for all “illegal foreigners” to leave Pakistan. On 10 October 2023, a Government-wide circular was issued by the Chief Commissionerate for Afghan Refugees (CCAR) under the Ministry of States and Frontier Regions (SAFRON), stating that PoR and ACC holders can only be repatriated on a voluntary basis. This was followed on 9 and 16 October 2023 by a Provincial-wide circular issued by the Home Departments of Balochistan and Sindh, stating that PoR and ACC holders can only be repatriated voluntarily.

On 28 October 2023, the media quoted the Balochistan Information Minister Mr. Jan Achakzai as saying that “action would be taken against those who rent out their houses and shops to illegal immigrants, and illegal properties of foreigners would be confiscated.”

On 30 October 2023, a notification was issued by the Ministry of Interior, instructing all relevant authorities to enact the “Illegal Foreigners’ Repatriation Plan” as of 1 November 2023. On 14 November 2023, your Excellency’s Government announced that over 220,000 migrants had returned to Afghanistan. More than 12,500 Afghan nationals have been arrested in 2023, out of these, 49.7% are women and almost 30% are girls.¹

The Prime Minister of Pakistan has reportedly defended the Plan, inter alia, on two national security-related grounds: first, that Afghanistan has failed to prevent anti-Pakistan militants based in Afghanistan from mounting cross-border attacks in Pakistan; and secondly, that “[a] significant portion of those involved in criminal and terrorist activities” in Pakistan are “illegal immigrants” from Afghanistan.

The Illegal Foreigners’ Repatriation Plan, in its current formulation, does not contain provisions for individualised assessments of risks of refoulement, including for Afghan women and children who are victims of trafficking or who may otherwise have justifiable fear of persecution upon return, who may be at risk of trafficking; or for persons that belong to religious minorities such as Uyghurs, Rohingya, and Afghan Shia Muslims (many of whom are Hazaras); for human rights defenders, members of civil society, and journalists; for LGBTI persons; and for former members of the Afghanistan government and the Afghanistan armed forces. Further, there is concern that the Plan does not contain provisions for an individualised assessment of gender-specific dimensions of risks of persecution on any ground, including on gender, and trafficking for purposes of child or forced marriage, domestic servitude, or sexual exploitation, including sexual slavery.

In relation to children, the Illegal Foreigners’ Repatriation Plan, does not set out specific measures to ensure the best interests and rights of all children, without discrimination, including child victims of trafficking and children at risk of trafficking. In its current formulation, there is no provision in the Plan to assess the specific protection needs for unaccompanied or separated children, who may be at particular risk of *refoulement*.

Since the announcement of the order, we have received information on cases such as the following:

- Instances and fear of arrest, forced eviction, and forced deportation to Afghanistan, including among persons that belong to groups that are at a high risk of persecution in Afghanistan and women who fled Afghanistan due to persecution by family members;

¹ UNHCR-IOM Flash Update #5 (15 September – 11 November), 15 November 2023, <https://data.unhcr.org/en/documents/details/104807>

- Indications from persons without documents, with documents, and under process of resettlement that they are in hiding;
- Reports of demolition of houses and businesses of Afghans and notices to vacate their rental accommodations, regardless of documentation status, including as a consequence of threats of legal action against landlords who provide housing for “undocumented” Afghans;
- Police raids on the homes of registered refugees in Pakistan, confiscation of their property, destruction of Proof of Registration cards, arrests without charge and demands for bribes;
- Searching operations of State police of informal settlements for refugees that have not left voluntarily, demolishing their homes without warning or due process, resulting also in the destruction of their personal belongings.
- Obstacles in obtaining documentation such as Proof of Registration cards and Afghan Citizen Cards, including long waiting periods, unresponsive service providers, requests for bribes, and high necessary fees and commissions;
- Reports that Afghan women and girls in Pakistan have faced sexual harassment, threats and insults;
- Complaints that the duration of validity of Afghans’ documents has diminished, requiring them to undergo the complicated processes and long waiting periods repeatedly;
- Reports of different outcomes of migration procedures for the same nuclear family, leading to different migration statuses and validity dates within a single family exposing them to the risk of family separation. In this context, we have also received reports of unaccompanied children separated from their families;
- Fear of arrest among persons who are approved for a third country referral and likely to travel within a year from now, and do not wish to return to Afghanistan;
- Reports of many Afghan nationals leaving due to threats, bullying and violence, even if they have valid documents, have lived for decades in Pakistan, or were born in Pakistan and have never been to Afghanistan.

We would like to [reiterate the call](#) made jointly by several UN experts to your Excellency’s Government on 17 October 2023, to cancel plans of all further mass deportations of Afghan nationals until the circumstances and human rights situation in Afghanistan allow for safe and dignified returns. We are concerned about the risk of *refoulement* for “documented” and “undocumented” Afghans who fled to Pakistan seeking safety and protection due to serious human rights concerns and a humanitarian crisis in Afghanistan. Any returns or deportation orders must be accompanied by an individual assessment of the circumstances and protection needs,

including in relation to the principle of non-*refoulement*, the best interest of the child and the right to family life.

In this context, we wish to bring to the attention of your Excellency's Government, the obligations of non-*refoulement* arising under international human rights law and customary international law. Article 3 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT), ratified by Pakistan on 23 June 2010, states: "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Article 3(2) states "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." Article 2, paragraph 2, provides that the prohibition against torture is absolute and non derogable and emphasizes that no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. In the context of the prohibition against torture and other forms of ill-treatment, the principle of non-*refoulement* is applicable to all situations with no exceptions, and to all human beings, without discrimination.

We would also like to note that we do not consider any returns to Afghanistan "voluntary" as there has been direct or indirect pressure on all Afghans under the current policies to return to Afghanistan.

We are concerned about the Plan's phased approach, particularly due to the risk that holders of Proof of Registration cards and Afghan Citizen Cards, as well as holders of student and health visas, might be deported in phases two and three.

We express particular concern about certain persons and groups facing human rights violations upon return to Afghanistan, including women and girls who are banned from school, universities, education, employment and confined to their home in Afghanistan. The ban on girls' education makes Afghanistan the only country in the world where girls and young women are forbidden from attending secondary school and higher education institutions. The pattern of large-scale systematic violations of women's and girls' fundamental rights in Afghanistan constitutes gender persecution. (A/HRC/53/21, para 92-94)

Currently in Afghanistan there is an institutionalised system of gender-based discrimination against women and girls, constitutive of gender persecution, as documented in the joint 2023 report A/HRC/53/21 by the Working Group on discrimination against women and girls and the Special Rapporteur on the situation of human rights in Afghanistan, which they will be facing upon return.

We note that girls and women above sixth grade are denied education in Afghanistan and by returning Afghan women and girls your government will contradict its own statements at the Human Rights Council, the General Assembly and the Organisation of Islamic Conference that strongly affirm support for education of women and girls in Afghanistan.²

² National Statement for Interactive Dialogue with the Special Rapporteur on Afghanistan (Oral Update), 54th HRC Session, 11 September 2023. Available at <https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/54/Pages/Statements.aspx?SessionId=70&MeetingDate=11/09/2023%2000:00:00>

We also express our concern about the situation of boys, former Government personnel, former military personnel, female human rights defenders, persons who work or worked for civil society organisations or for the media, religious and ethnic minorities, LGBTI persons, and persons with disabilities. The situation in Afghanistan remains critical, and many returnees would be at risk of serious human rights abuses. In addition, we are concerned that persons expelled from Pakistan will not have access to adequate housing in Afghanistan, which may result in a significant percentage of them being forced into homelessness, thus violating the fundamental human rights protections in relation to the rights to adequate housing to be upheld by all States in all circumstances.

We are also concerned about information we have received that Afghans have allegedly been forcefully evicted from their homes, the arbitrary demolition of their homes and personal belongings. In addition, we express our concern, that landlords have been threatened with legal action if they were to continue renting out their homes to “undocumented Afghans.”

We have also received reports of Pakistan using holding or deportation centers to detain foreigners pending deportation, and we would like to seek further clarity on these reports. Such immigration detention centers should be used only as a last resort, should not be used to force a return and should comply with the principles of legality, necessity, proportionality and non-discrimination. Children and other vulnerable groups should never be put in immigration detention centers and alternatives to detention must always be provided to unaccompanied migrant children and families with children. According to international human rights standards, detention for immigration 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. The detention of any child for reasons related to their immigration status or the immigration status of their parents or legal guardians can never be considered in the best interest of the child and always constitutes a violation of the rights of the child, in accordance with the applicable international human rights standards. We are concerned about reports of unaccompanied children and the separation of families in which different members have distinct documentation statuses. We also express concern about the reported harassment, threats, arbitrary arrest of Afghans in Pakistan, including those with valid documentation, and the destruction of their homes and businesses and personal belongings in violation of international human rights law.

International actors such as the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), and the Special Rapporteur the promotion and protection of human rights and fundamental freedoms while countering terrorism (see A/62/263) have emphasized that unsubstantiated linkages must not be drawn between refugees and risks of terrorism. UNHCR notes that “[a]ny discussion on security safeguards should start from the assumption that refugees are themselves escaping persecution and violence, including terrorist acts, and are not the perpetrators of such acts.”³

³ See Message from Mr. Ruud Lubbers, United Nations High Commissioner for Refugees, to the Special Meeting on Terrorism and International Law at the International Institute of Humanitarian Law, San Remo, Italy, 30 May 2002, available at <https://www.unhcr.org/publications/message-mr-ruud-lubbers-United-nations-high-commissioner-refugees-special-meeting>

There is no basis under international law to expel foreign nationals at risk of *refoulement* in retaliation for the alleged conduct of their state of nationality. The New York Declaration for Refugees and Migrants 2016 (in its annexed Comprehensive Refugee Response Framework) and the Global Compact on Refugees 2018 (at para. 56) recognise the legitimate security concerns of States. However, sovereign control over migration is always subject to international legal obligations (New York Declaration, para. 42), including *non-refoulement* and the prohibition on collective expulsion without individualised decisions, due process of law, and adequate safeguards.

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 measures adopted by your Excellency's Government to protect the human rights of Afghan nationals, regardless of their migration status, and how these measures are in accordance with international human rights law and other relevant international standards. In particular, please indicate measures taken or to be taken by your Excellency's Government to ensure the full respect of the principle of *non-refoulement*;
3. Please indicate what measures are taken in the context of any proposed removal, deportation or expulsion proceedings, to undertake an individual assessment of the circumstances and protection needs of each Afghan national, to ensure respect for the principle of *non-refoulement*, the best interest of the child and the right to family life. Please indicate how the measures taken comply with the principles of legality, proportionality, necessity and non-discrimination;
4. Please provide information on measures taken to identify, assist and protect Afghan nationals who are victims of trafficking for all purposes of exploitation, or at risk of trafficking, and please provide gender and age disaggregated data on the numbers of Afghan nationals in Pakistan identified as victims of trafficking;
5. Please provide information on the measures taken to ensure effective protection against *refoulement*, and effective access to the right to seek and enjoy asylum for Afghan nationals with disabilities;
6. Please explain what measures have been introduced to provide a gender-sensitive asylum procedure;

7. Please indicate the measures taken by your Excellency's Government to ensure the right to adequate housing of Afghan nationals, including the aspect of security of tenure;
8. Please indicate the measures taken by your Excellency's Government to prevent the reported forced evictions, to hold those responsible for the forced eviction and the arbitrary demolition of housing to account, and to provide redress and adequate compensation to those whose homes have been demolished and/or their property confiscated, extorted or destroyed;
9. Please explain if any investigations, prosecutions or legal procedures have been carried out on any of the complaints of harassment, arbitrary arrest and instances of bribes or corruption in relation to the implementation of the Plan.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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 will be sent to the Permanent Mission of Afghanistan in Geneva and to *de facto* authorities in Afghanistan.

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

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

Richard Bennett
Special Rapporteur on the situation of human rights in Afghanistan

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Gehad Madi
Special Rapporteur on the human rights of migrants

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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 would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights, which states that "Everyone has the right to life, liberty and security of person," and articles 6 (1), 7, 9 and 18 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2021, which guarantees the inherent right to life of every individual, the prohibition of torture, the right to liberty and security of the person as well as the right to freedom of religion or belief. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of State parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

We also wish to bring to the attention of your Excellency's Government article 18 of the ICCPR which states that "Everyone shall have the right to freedom of thought, conscience and religion. These rights shall include freedom [...] either individual or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

Furthermore, we wish to refer to article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution." We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-*refoulement* and the prohibition of arbitrary or collective expulsions.

The principle of non-*refoulement* is codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Pakistan has been a party since 2010. 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 (see also ICCPR, article 7). As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of *refoulement* under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterised by its absolute nature without any exception. 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. States must also consider the particular needs and vulnerabilities of each child, which may give rise to irreparable harm in the country of return. The principle of non-*refoulement* under international human rights law further protects against return to a country where there is a real and foreseeable risk of arbitrary deprivation of life (ICCPR, art 6) or the flagrant denial of other fundamental human rights (ARJ v Australia, para 6.9), such as the right to a fair trial, liberty, or freedom of thought, religion or conscience. Again, there is no exception allowing *refoulement* to such

harms under any circumstances.

Further, General Comment no.4 (2017) of the Committee against Torture states that trafficking in persons may constitute torture (as included in a non-exhaustive list of human rights situations that may constitute an indication of a risk of torture), to which the principle of non-*refoulement* should be applied. This includes whether the person concerned would be deported to a State where he or she was subjected to or would run the risk of being subjected to slavery and forced labour or trafficking in human beings (CAT/C/GC/4, para. 29n).

We wish to draw the attention of your Excellency's Government to its obligations to ensure the right to adequate housing as an aspect of the right to an adequate standard of living, recognized by article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Pakistan on 17 April 2008. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 stated that "forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". Further, in its General Comment No. 7 on forced evictions the Committee stressed that "forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant (para. 12)". In addition, "States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected." (para. 13) The Committee stated that "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights." (para. 16)

The Committee highlighted that, "[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless." (para. 10)

The alleged forced evictions also violate article 17.1 of the International Covenant on Civil and Political Rights, protecting everyone against 'arbitrary or unlawful interference' with one's home."

We would like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on trafficking in persons, "Refugee Protection, Internal Displacement and Statelessness", (A/HRC/53/28), which states that the obligation of non-*refoulement* also applies to risks of trafficking in persons arising from non-State actors, where the State is unable or unwilling to provide protection. (A/HRC/53/28, para. 30). Such protection must include specialized assistance measures for victims of trafficking and persons at risk of trafficking. (A/HRC/53/28, para. 35).

We would also like to draw the attention of your Excellency's Government to the thematic report of the former 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 and refugee protection needs, including access to asylum. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

We would like to remind your Excellency's Government of the obligations arising under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Pakistan on 12 March 1996, in particular, Articles 2 and 6 of the Convention, commitments to protect women against *refoulement* and gender-related forms of persecution, including trafficking in persons.⁴ The Illegal Foreigners Repatriation Plan (IFRP) does not provide specific safeguards to identify, assist or protect Afghan women and girls in Pakistan, who may be at increased risk of trafficking in persons during displacement and return to their country of origin.

In its General Recommendations no. 32 on the gender-related dimensions of refugee status, asylum nationality and statelessness of women, the Committee on the Elimination of All Forms of Discrimination Against Women notes that women are forced to leave their countries of origin due to very serious forms of discrimination and gender-related persecution and recognizes "that displacement arising from armed conflict, gender-related persecution and other serious human rights violations that affect women compounds existing challenges to the elimination of discrimination against women" (CEDAW/C/GC/32, para. 14). Moreover, the Committee on the Elimination of All Forms of Discrimination Against Women underlined that States have the primary responsibility to ensure that asylum-seeking women and refugee women "are not exposed to violations of their rights under the Convention" (CEDAW/C/GC/32, para. 7), and that States need to "refrain from engaging in any act of discrimination against women that directly or indirectly results in the denial of equal enjoyment of their rights" (CEDAW/C/GC/32, para. 8). States are obliged to "treat women with dignity and to respect, protect and fulfill their rights under the Convention on each stage of the displacement cycle, as well as in the enjoyment of durable solutions" (CEDAW/C/GC/32, para. 14). Women should have access to asylum procedures and if their request has been denied, they "should be granted dignified and non-discriminatory return processes" (CEDAW/C/GC/32, para. 24). In particular, "no asylum seeker or refugee is to be expelled or returned (*refouled*) in any manner whatsoever to the frontiers of territories where his or her life or freedom of the right to be free from torture or other cruel, inhuman or degrading treatment or punishment would be threatened" (CEDAW/C/GC/32, para. 20). States need to

⁴ Committee on the Elimination of Discrimination against Women (CEDAW) General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para.15. See UNHCR, "Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked", guideline No. 7 (HCR/GIP/06/07).

"protect women from being exposed to a real, personal and foreseeable risk of serious forms of discrimination against women, including gender-based violence" (CEDAW/C/GC/32, para. 22).

In its General Recommendation no. 38 on trafficking in women and girls in the context of global migration (2020), the Committee on the Elimination of All Forms of Discrimination Against Women has stated that trafficking "is part and parcel of gender-related persecution" (CEDAW/C/GC/38, para. 45). Further, as highlighted in General Recommendation no. 38, "Women and girls face an increased risk of being trafficked at all stages of the migration cycle – in transit, in reception and accommodation facilities, at borders and in destination countries. Upon return, they may experience reprisals and revictimization. Although States have a sovereign prerogative to manage their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties that they have ratified or to which they have acceded" (CEDAW/C/GC/38, para. 22-23). Also, gender-related claims can intersect with other prohibited grounds, such as race, ethnicity, religion, etc. (CEDAW/C/GC/32, para. 16).

Further, we remind your Excellency's Government that State parties to the Convention on the Elimination of All Forms of Discrimination against Women "are obligated to protect victims of trafficking in persons, especially women and children, from revictimization, which includes guaranteeing victims of trafficking protection against forcible return" (CEDAW/C/GC/38, para. 41).

The Working Group on discrimination against women and girls noted in its report on women deprived of liberty (A/HRC/41/33) that measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, which sometimes includes female human rights defenders. It has further recommended that States ensure measures addressing national security, terrorism, conflict, and crisis, incorporate a women's rights focus and do not instrumentalise women's deprivation of liberty for the purposes of pursuing government aims. As highlighted in its report on health and safety (A/HRC/32/44), the Working Group stressed that women's safety should be addressed as an integral aspect of women's health. Women's exposure to gender-based violence in both the public and private spheres, including in conflict situations, is a major component of women's physical and mental health and the destruction of their well-being, and it constitutes a violation of their human rights.

The joint report by the Special Rapporteur on human rights in Afghanistan and the Working Group on discrimination against women and girls on the situation of women and girls in Afghanistan (A/HRC/53/21), also highlighted that undocumented returnee and migrant women and girls face significant barriers to sustaining themselves on return, as a lack of documents compounds the impact of the economic crisis. In this context, as well as considering the current restrictive measures in Afghanistan, the Special Rapporteur and the Working Group recommended States to grant support and protection to all Afghan women and girls who are outside Afghanistan, and take measures to ensure their long-term security, including by granting them refugee, protective or regular status, facilitating their safe resettlement and expanding the provision of educational scholarships and mental health services.

Regarding obligations towards children, we would like to remind your Excellency's Government of the obligations arising under the Convention on the

Rights of the Child (CRC), ratified by your Excellency's Government on 12 November 1990. The CRC highlights the serious risks of trafficking of refugee, asylum seeking and migrant children, particularly of girls, that affect their rights to life, survival and development. (General Comment no. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para. 23). We highlight that trafficking of children is a serious violation of human rights and constitutes persecution.⁵ To ensure fulfilment of States' positive protective obligations to prevent trafficking of children, articles 34 to 36 of the Convention on the Rights of the Child must be read in conjunction with the special protection and assistance obligations arising under article 20 of the Convention, and the general obligation of non-discrimination set out in article 2. The obligation of non-*refoulement* arising under the CRC, is absolute, and permits no exceptions or derogations. As required under article 35 of the CRC, State Parties are to take all appropriate national, bilateral and multilateral measures to prevent, inter alia, the traffic in children for any purpose or in any form. This requirement imposes positive obligations on States to ensure identification, assistance and protection, including access to asylum and protection against *refoulement*.

We would like to stress that every migrant child, regardless of their migration status, should be considered as a child first and foremost. All migrant children should be entitled in law and in practice to all the rights enshrined in the Convention on the Rights of the Child. Heightened consideration must also be given to children in the context of non-*refoulement*, whereby the best interests of the child must be the paramount consideration in any actions or decisions taken by the State. As stated in the report of the United Nations High Commissioner for Human Rights on Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, a formal procedure to determine the best interests of the child should be conducted with certain safeguards. For example, such safeguards should include the meaningful participation of authorities responsible for child protection, as well as the right of the child to be heard and to have competent and independent legal representation (arts. 3.1 and 12 CRC; A/HRC/37/34, principle 6, guideline 6). In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, and where a return is deemed not to be in the child's best interests, families should be kept together in the country of residence.

We would also like to recall article 22 of the Convention on the Rights of the Child, which calls upon States to "take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

In its General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin of 1 September 2005, the Committee on the Rights of the Child stated that States party to the Convention on the Rights of the Child "[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 [right to life] and 37 [right to

⁵ UNHCR Executive Committee, Conclusion No. 107, para. (g)(viii). See also A/HRC/53/28, para.65

be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty] of the Convention” (CRC/GC/2005/6, para. 27).

Such 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 action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services (CRC/GC/2005/6, para. 27).

Regarding specific concerns of the return of victims of trafficking, we recall the obligations arising under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), ratified by your Excellency’s Government on 4 November 2022. In particular, we recall article 6, which sets out provisions for “Assistance to and protection of victims of trafficking in persons,” and article 7, which calls upon States to “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” (article 7(1), and, “to give appropriate consideration to humanitarian and compassionate factors” (article 7(2)).

In this context, we highlight the obligation on States to ensure that victims of trafficking are given an effective opportunity to seek and enjoy asylum and other forms of international protection and that they are not penalised for their mode of entry into the State. General Recommendation No. 38 of the Committee on the Elimination of Discrimination against Women, on trafficking of women and girls in the context of international migration, reiterates the importance of the non-punishment principle and the obligation of States to ensure its application to all victims “without exception” (CEDAW/C/GC/38, para. 98). The Global Compact on Safe, Orderly and Regular Migration calls on States to “facilitate access to justice and safe reporting without fear of detention, deportation or penalty”. (A/RES/73/195, Objective 10, para. 26(e))

In this regard, we wish to remind your Excellency’s Government that victims of trafficking are often in irregular situations and without documentation. As stated in the Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, assistance and protection shall be given unconditionally and regardless of the migratory status of the victims. In this regard, we wish to bring your Excellency’s Government attention to principle 7, which provides that, “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons,” and Principle 8, which calls upon States to “ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”

Guideline 2.5 of the OHCHR Principles and Guidelines for Human Rights and Human Trafficking, calls upon States to ensure that trafficked persons are not prosecuted for violations of immigration laws or for the activities that they are involved in as a direct consequence of their situation as trafficked persons. In its resolution 10/3, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime reiterated the non-punishment principle and the importance of access to remedies if victims are punished or prosecuted.⁶

As stated in the report of the Special Rapporteur on trafficking in persons, especially women and children on the Implementation of the Principle of Non-Punishment (A/HRC/47/34), states should ensure that the principle of non-punishment is applied to: “criminal, civil, administrative and immigration offences, as well as other forms of punishment, such as arbitrary deprivation of nationality, denial of consular assistance or repatriation, exclusion from refugee status or other forms of international protection and family separation; (d) Any situation of deprivation of liberty, including immigration detention and detention pending removal, transfer or return proceedings” (A/HRC/47/34, para. 57.c-d).

Further, we would like to remind your Excellency’s Government of the obligations arising under article 8 of the Palermo Protocol, which provides: “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 preferably be voluntary.” Principle 11 of the OHCHR Recommended Principles and Guidelines also provides: “Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.” Further, it is provided that in implementing this principle, guideline 2.7 of OHCHR Recommended Principles and Guidelines continues that States should consider “ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.”

In the specific context of victims of trafficking with disabilities, we further highlight States’ obligation to ensure that information and procedures for trafficked persons with disabilities, are accessible, meet the obligations of reasonable accommodation and comply with international human rights law. Recalling the Convention on the Rights of Persons with Disabilities (article 1), we note that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, and we highlight the obligation of States to ensure equality before the law, including taking measures to provide access by persons with disabilities to the support required in exercising legal capacity. This also requires ensuring that specialised assistance is provided for trafficked persons or persons at risk of trafficking with disabilities, who are presenting asylum claims or other claims

⁶ (Conference of the Parties to the United Nations Convention against Transnational Organized Crime, resolution 10/3, entitled: “Effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, para. 13 (g).)

for international protection. The particular risks of trafficking that may be faced by persons with disabilities for all purposes of exploitation, should be recognised in individualised assessments of asylum claims and *refoulement* determination procedures.⁷ Recalling Security Council Resolution 2475 (2019), the Special Rapporteur on trafficking in persons has highlighted that all responses to risks of trafficking in persons must be disability inclusive and ensure the rights of persons with disabilities, including in provision of information, access to safe and accessible accommodation, transportation and in all assistance and protection measures.⁸

Furthermore, we wish to remind your Excellency's Government that there is no basis under international law to expel foreign nationals at risk of *refoulement* in retaliation for the alleged conduct of their state of nationality. In principle, peaceful counter-measures (article 49 of the ILC articles on State Responsibility 2001) are available against a State (and by extension, its nationals) which fails to fulfil its international obligation to suppress in its territory diligently the preparation of terrorism directed against foreign states. Countermeasures shall not, however, affect a State's obligations to protect fundamental human rights (article 49(1)(b) of the ILC Articles), which includes *non-refoulement*. Further, the principle of *non-refoulement* under international human rights law is absolute and non-derogable and admits no security-based exceptions.

We would also like to remind your Excellency's Government that even when Afghan nationals present in Pakistan do not claim to be at risk of *refoulement*, international law still requires non-arbitrariness and due process in the expulsion of any alien, including a decision in accordance with grounds specified under national law; notice of the reasons for expulsion, and an opportunity to challenge them (including through sufficient disclosure of evidence); review by an independent, competent authority; and a right to be represented on appeal (article 13 of the ICCPR; UN Human Rights Committee, General Comment No 15; articles 4-5 and 26 of the ILC Draft articles on the Expulsion of Aliens 2014). Even where individuals are lawfully expelled, the return and reception of persons must be carried out in full respect for international human rights law, and there should be independent monitoring of such processes (guideline 9 of the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders (2014)).

The New York Declaration for Refugees and Migrants 2016 (in its annexed Comprehensive Refugee Response Framework) and the Global Compact on Refugees 2018 (at para. 56) recognise the legitimate security concerns of States. However, sovereign control over migration is always subject to international legal obligations (New York Declaration, para. 42), including *non-refoulement* and the prohibition on collective expulsion without individualised decisions, due process of law, and adequate safeguards. We remind your Excellency's Government that both the United Nations Security Council and General Assembly have consistently affirmed that all measures to counter terrorism must comply with international law, including

⁷ See: Keelin Barry, Irish Centre for Human Rights, Submission on Draft General Comment on Persons with Disabilities in Situations of Risk and Humanitarian Emergencies (Article 11 of the Convention on the Rights of Persons with Disabilities (2023), available at: <https://www.ohchr.org/en/calls-for-input/2023/day-general-discussion-and-call-written-submissions-article-11-convention> .

⁸ Joint Statement: "Ukraine: Armed conflict and displacement heightens risks of all forms of sexual violence including trafficking in persons" 16 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/ukraine-armed-conflict-and-displacement-heightens-risks-all-forms-sexual>.

international human rights law and international refugee law.⁹ Where a person is at risk of *refoulement*, returns must be strictly voluntary, based on the informed choice of the persons involved.

Further, the UN Global Counter-Terrorism Strategy 2006 cautions that violations of human rights – which include forced collective expulsions – are themselves conditions conducive to terrorism (Pillar I). The Security Council similarly warns that violations of international law foster a sense of impunity and may increase radicalization (resolution 2178 (2014)).

In connection with the reports of the detention of Afghan nationals at the immigration centres, 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 adults 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 International ICCPR. We would also like to refer 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”.

We wish to emphasize that the detention of any child for reasons related to their, their parents’ or their legal guardians’ immigration status can never be considered in the best interests of the child and always constitutes a violation of the rights of the child, in accordance with the applicable international human rights standards. The Committee on the Rights of the Child has clearly stated that the immigration detention of any child is a violation of children’s rights and always contravenes the principle of the best interest of the child.¹⁰ This position has been affirmed by joint General Comment No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. Several special procedures mandate holders have also stressed that immigration detention of children should be prohibited (para. 11, Annex, A/HRC/39/45; para. 73, A/HRC/37/50; and para. 46, A/HRC/30/37). In its Revised Deliberation No. 5 on deprivation of liberty of migrants, the Working Group on Arbitrary Detention stresses that the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.

Finally, we would like to recall that 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

⁹ See eg UN Security Council resolutions 1456 (2003) and 2178 (2014); UN General Assembly Global Counter-terrorism Strategy 2006.

¹⁰ Report of the 2012 day of general discussion, Committee on the Rights of the Child, para 32: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

respect for the human rights of migrants” and “urge[s] 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.”