February 28, 2022

**To:
Mr. Felipe GONZÁLEZ MORALES**Special Rapporteur on the human rights of migrants

**Subject: Submission for HRC report 2022**

Dear Mr. Rapporteur,

Cáritas Brasileira, Centro de Direitos Humanos e Cidadania do Imigrante (CDHIC), Conectas Direitos Humanos and Missão Paz present the following inputs for the Special Rapporteur’s report on human rights violations at international borders: trends prevention and accountability.

**1. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021. Grateful if you could kindly submit the original text of the relevant provisions of the legislation or policy(ies), accompanied by an English translation if it is in a language other than English, French or Spanish.**

It is possible to highlight four axes: **I)** domestic legislation on restrictions on border entry, particularly affecting migrants, refugees and asylum seekers from Venezuela, from March/2020 to June/2021; **II)** currentdomestic legislation related to border opening conditioned on the presentation of proof of vaccination against COVID-19, **III)** reopening of procedural deadlines in migratory administrative proceedings, since October/2020, and **IV)** provision of humanitarian visas and the possibility of residence on humanitarian basis for nationals of Afghanistan and Haiti.

**I)** Between March/2020 and May/2021, multiple administrative rules placing **restrictions on entry into the country** by air, land and water were published. Although they placed restrictions on all nationalities, the norms were stricter and discriminatory against people coming from Venezuela, since they did not extend to these people the exceptions available for those coming from other countries. Notably, for example: the entry of people from other countries who have a permanent or temporary residence permit in Brazil, the entry of people who have a National Migration Identity Card or the entry of children, parents, spouses, partners or guardians of Brazilian citizens. Besides being unequal and incompatible with constitutional principles, such measures were also contradictory, as the Brazilian government had recognized the context of a humanitarian crisis and serious and widespread human rights violations in Venezuela. In June/2021, with the publication of Administrative Rule n. 655/2021, such discriminatory context finally began to shift, with the acknowledgement that the restrictions on entry did not prevent the execution of emergency assistance measures for reception and migratory regularization applied to the Venezuelan migratory flow. Concerning this topic, the following items can be highlighted as relevant adopted domestic legislation:

* Administrative Rule n. 19/2021 ([*Portaria Interministerial n. 19, de 23 de março de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-interministerial-mjsp/mre-n-19-de-23-de-marco-de-2021-310351485)): Provides for the residence permit to an immigrant who is in Brazilian territory and is a national of a border country, where the Residence Agreement for Nationals of the States Parties to the MERCOSUR and Associated Countries is not in force.
* Administrative Rule n. 655/2021 ([*Portaria n. 655, de 23 de junho de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-n-655-de-23-de-junho-de-2021-327674155)): Provides for the exceptional and temporary restriction on the entry into the country of foreigners of any nationality, as recommended by the National Health Surveillance Agency - Anvisa. (not currently in force)
* Administrative Rule n. 652/2021 ([*Portaria n. 652, de 25 de janeiro de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-n-652-de-25-de-janeiro-de-2021-300740786)): Provides for the exceptional and temporary restriction on the entry into the country of foreigners of any nationality, as recommended by the National Health Surveillance Agency - Anvisa. (not currently in force)

**II)** The Administrative Rule n. 666, published in January 2022, based on a preliminary decision of the Brazilian Supreme Court, determined the **opening of all borders conditioned on the presentation of proof of vaccination against COVID-19**. The issue at stake, however, concerns the lack of criteria for defining exceptions for people coming from countries facing humanitarian crises or that have low vaccination coverage. Such criteria are still vague and unclear, generating legal uncertainty and opening space for the arbitrariness of border agents and airlines. Concerning this topic, the following item can be highlighted as relevant adopted domestic legislation:

* Administrative Rule n. 666/2022 ([*Portaria Interministerial n. 666, de 20 de janeiro de 2022*](https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-666-de-20-de-janeiro-de-2022-375486913)): Provides for exceptional and temporary measures for entry into the country, under Law No. 13,979, of February 6, 2020.

**III)** Due to the COVID-19 pandemic, in 2020 the attendance of migrants, asylum seekers and refugees at the brazilian migratory authority (Federal Police) was hampered throughout the country, generating a large contingent of people unable to request their migration regularization and even the renewal of their existing documents. In response, it was determined the suspension of procedural deadlines and the extension of the validity of civil identification documents, to ensure their access to rights. In October/2020 the **procedural deadlines in migratory administrative proceedings were reopened**. Even considering the efforts and measures taken by the authorities to normalize the attendance of this public, migrants and refugees currently face difficulties in accessing this service and, consequently, remain undocumented. In addition, the validity of protocols related to migratory regularization and request for recognition of refugee status, national migratory registration cards and provisional documents for national migratory registration have only been extended until March 15, 2022. Concerning this topic, the following items can be highlighted as relevant adopted domestic legislation:

* Administrative Rule n. 4/2020 ([*Portaria n. 4, de 21 de outubro de 2020*](https://www.in.gov.br/en/web/dou/-/portaria-gab-demig-n-4-de-21-de-outubro-de-2020-284694055#:~:text=de Migração%2C resolve%3A-,Art.,que faltava para sua complementação.)): Provides for the resumption of procedural deadlines in administrative proceedings under the competence of the Department of Migration.
* Administrative Rule n. 25/2021 ([*Portaria n. 25, de 17 de agosto de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-n-25/2021-direx/pf-de-17-de-agosto-de-2021-340771055)*)*: Provides for the extension of the deadline for migratory regularization within the scope of Federal Police.
* Administrative Rule n. 3/2021 ([*Portaria n. 3, de 26 de agosto de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-gab-demig-n-3-de-26-de-agosto-de-2021-341045285)): Amends §4 of art. 1 of Ordinance GAB-DEMIG No. 4, of October 21, 2020, which provides for the resumption of procedural deadlines in administrative proceedings under the competence of the Department of Migration.

**IV)** In September/2021, Brazil published a new legislation granting the possibility to issue **humanitarian visas and residence** for Afghan nationals, stateless persons and persons affected by the situation of serious or imminent institutional instability, serious violations of human rights or international humanitarian law in **Afghanistan**. In December/2021, a legislation regulating the already existing humanitarian visa and residence on humanitarian basis for Haitian nationals and stateless persons affected by a major calamity or environmental disaster situation in the **Republic of Haiti** was also published. Despite both instrument’s relevance, it is fundamental to highlight that in practice both modalities present preoccupying challenges. It has been reported by multiple civil society organizations that humanitarian visas for Haitian nationals, as well as family reunion visas, are not being properly issued due to the instability of the operating system and the malfunctioning of the service at the consular office. In fact, Haitian migrants had to file lawsuits to request family reunion[[1]](#footnote-1). Furthermore, civil society is extremely concerned that the government will only grant humanitarian visas to Haitians until April 2022, even though these migrants still face serious human rights violations, humanitarian crises and political conflicts and, therefore, need humanitarian assistance for a longer time. In relation to afghans, despite the regulation of the humanitarian visa, people in Afghanistan face bureaucratic obstacles and a delay of months in obtaining the document.

Concerning this topic, the following items can be highlighted as relevant adopted domestic legislation:

* Administrative Rule n. 24/2021 ([*Portaria Interministerial n. 24, de 3 de setembro de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-24-de-3-de-setembro-de-2021-343300675)): Provides for the granting of temporary visa and residence permit for humanitarian reception purposes to Afghan nationals, stateless persons and persons affected by the situation of serious or imminent institutional instability, serious violation of human rights or international humanitarian law in Afghanistan.
* Administrative Rule n. 27/2021 ([*Portaria Interministerial n. 27, de 30 de dezembro de 2021*](https://www.in.gov.br/en/web/dou/-/portaria-interministerial-mjsp/mre-n-27-de-30-de-dezembro-de-2021-371523590)): Provides for the granting of temporary visas and residence permits for humanitarian reception purposes to Haitian nationals and stateless persons affected by major calamities or environmental disasters in the Republic of Haiti.

**2. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.**

Since March 18th 2020, the Brazilian government has published a sequence of 37 administrative rules placing restrictions on entry into the country, under the pretense of containing the spread of COVID-19. The pandemic was used only as an excuse, because air borders were opened before all others for tourists in June 2020 and there was the exclusive opening of the land border with Paraguay, in October 2020, proving that the Government was guided by economic interests rather than by sanitary reasons. Furthermore, the administrative rules are illegal, unconstitutional and disrespect the national legislation, as well as international human rights treaties ratified by Brazil.

These administrative rules infringe on the fundamental rights to a full defense, adversarial proceedings and due legal process, as well as the principle of *non-refoulement,* since all of them determined **immediate deportation or repatriotin** as a consequence of non-compliance, including the administrative rule currently in force ([*Portaria Interministerial n. 666, de 20 de janeiro de 2022*](https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-666-de-20-de-janeiro-de-2022-375486913)).

In this regard, some examples of the disastrous impacts of these measures may be highlighted: In August 2020, there was a mass deportation of dozens of people, including children, that took place on the border between the state of Acre and Peru, which left them on a bridge for days, without food, water, hygiene, or shelter, as they could not return to Peru either[[2]](#footnote-2). In January 2021, more than 50 Venezuelan indigenous people, among them 32 children, experienced threats of mass deportation. Thanks to a lawsuit filed by the Public Defender’s Office, that did not happen[[3]](#footnote-3). In March 2021, in Pacaraima/Roraima, a shelter run by a nun, called Casa São José, was invaded by police forces. The nun was coercively taken to the police station. Only undocumented Venezuelan women, pregnant women and children lived at the place. They would have been deported had it not been for the quick action of the Public Defender’s Office and civil society organizations[[4]](#footnote-4).

Another illegal and disproportionate sanction provided for in the administrative rules, including the current one, is the **suspension of asylum requests**, which violates the right to immediate access to the asylum application procedure, putting the life and liberty of asylum seekers at risk.

Until June 2021, these administrative rules were more discriminatory against people coming from Venezuela, as no regulated entry exceptions used to apply to them. Although the government has later authorized the reception and regularization of Venezuelan migrants and refugees, in practice there were some limitations for their entry by land for some months[[5]](#footnote-5), encouraging them to seek alternative and dangerous paths. Also, this situation created a repressed demand for migratory regularization and, although this scenario has already improved there, until the end of last year there was a queue of about 4 thousand people seeking regularization in Pacaraima/Roraima, which impacted the increase in Venezuelans living on the streets[[6]](#footnote-6).

Finally, the latest administrative rule, published in January 2022, based on a preliminary decision of the Supreme Court, determined the opening of all borders, but the entry into the country is conditioned on the presentation of proof of vaccination against COVID-19. However, the criteria for defining exceptions for people coming from countries facing humanitarian crises or that have low vaccination coverage are still vague and unclear, generating legal uncertainty and opening space for the arbitrariness of border agents and airlines. In addition, the solution to define whether a situation fits into humanitarian exceptions is very bureaucratic, since a case not regulated by the administrative rule n. 666/2021 must be sent to the Civil House of the Presidency of the Republic for analysis, which must consult several agencies and ministries, compromising the necessary speed to deal with people in need of humanitarian aid.

1. Folha de São Paulo. Haitians get the right to come to Brazil without a visa after denouncing irregularities to obtain documents. July 30, 2021. Available at:
<https://www1.folha.uol.com.br/mundo/2021/07/haitianos-obtem-direito-de-vir-ao-brasil-sem-visto-apos-denunciarem-irregularidades-para-obter-documento.shtml> [↑](#footnote-ref-1)
2. Flávia Mantovani. Justice releases entry of Venezuelans who spent weeks trapped in a bridge between Brazil and Peru. Folha de S. Paulo, August 7, 2020. Available at:
<https://www1.folha.uol.com.br/mundo/2020/08/justica-libera-entrada-de-venezuelanos-que-ficaram-semanas-presos-em-ponte-entre-brasil-e-peru.shtml>. [↑](#footnote-ref-2)
3. G1. RR Justice orders Venezuelan children to be sheltered even with a closed border. January 09th, 2021. Available at:
<https://g1.globo.com/rr/roraima/noticia/2021/01/09/justica-de-rr-ordena-que-criancas-venezuelanas-sejam-acolhidas-mesmo-com-fronteira-fechada.ghtml>. [↑](#footnote-ref-3)
4. Flávia Mantovani. Brazil reopens border with Venezuela after more than 1 year, but limits entry. Folha de S. Paulo, June 24, 2021. Available at:
[https://www1.folha.uol.com.br/mundo/2021/06/brasil-reabre-fronteira-com-venezuela-apos-mais-de-1-ano-mas-limita-entrada.shtml#:~:text=Brasil%20reabre%20fronteira%20com%20Venezuela,06%2F2021%20%2D%20Mundo%20%2D%20Folha](https://www1.folha.uol.com.br/mundo/2021/06/brasil-reabre-fronteira-com-venezuela-apos-mais-de-1-ano-mas-limita-entrada.shtml#:~:text=Brasil reabre fronteira com Venezuela,06%2F2021 - Mundo - Folha) [↑](#footnote-ref-4)
5. Jornal Nacional. More than 4,000 Venezuelan refugees in Brazil live on the streets of Pacaraima (RR). September 13th, 2021. Available at:
<https://g1.globo.com/jornal-nacional/noticia/2021/09/13/mais-de-4-mil-venezuelanos-refugiados-no-brasil-vivem-nas-ruas-de-pacaraima-rr.ghtml> [↑](#footnote-ref-5)
6. Patrícia Campos Mello. Police invade refugee shelter and detain nun in Roraima. March 18, 2021. Available at:
<https://www1.folha.uol.com.br/mundo/2021/03/policia-invade-abrigo-de-refugiados-e-detem-freira-em-roraima.shtml> [↑](#footnote-ref-6)