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Brasília, Federative Republic of Brazil, September 12th, 2022.

**To the  
United Nations High Commissioner for Human Rights  
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Subject: Family reunification - Input on the basis of a draft outline for the General Comment No. 6**

1. The Federal Public Defenders' Office of the Federative Republic of Brazil, through its Working Group on Migration, Statelessness, and Refuge, and its Working Group on Preventing Human Trafficking, responds to the call to provide input to this initiative on the basis of a draft outline for general comment No. 6, hereby presents a contribution on the topic of family reunification.
2. This contribution embraces the draft outline for general comment No. 6's topic IV "Convergence of the Convention and the Global Compact in terms of human rights principles," specifically as regards family reunification. First, it offers an overview of the Federal Public Defenders Office's Work. Next, it addresses family reunification.

**A. Introduction: role of the Brazilian Federal Public Defenders' Office in Brazilian migration policy**

1. Federal Public Defenders' Office is an autonomous and permanent institution with the mission to provide juridical assistance free of charge to the most needed ones in Brazil, including promoting collective rights and human rights. According to the Brazilian Constitution "The Public Legal Defense is an essential institution to the jurisdictional function of the State and is responsible for the judicial guidance and the defense, in all levels, of the needy(...)." The Institution focuses its work in all areas related to the Federal Justice and Federal institutions, both civil and criminal. Through our Public Defenders, National and Regional Human Rights Defenders, and Working groups, we are working to strengthen human rights standards and secure meaningful access to justice. The institution has solid work on Human Rights advocacy. Our work embraces indigenous people, traditional people, Quilombolas, the right to adequate housing, education, health, assistance in shantytowns, prisons, victims of work in slave-like conditions, people affected by dams, refugees, migrants, and international children abduction procedures. Thus, the institution has a deep contact with the poorest of the poorest in the country. The institution is located in the 27 states of the Federal Republic of Brazil and has 70 offices to serve the population.

2. The [Complementary Law 80/1994](#) regulates the Public Defender's Office in Brazil and establishes several functions of this institution. For the present submission, we highlight the duties of "representing to the international systems for the protection of human rights, pleading before their bodies" and "exercising the defense of individual and collective interests. [...] [of] vulnerable social groups that deserve special protection from the State" (art. 4, VI and XI, of Complementary Law 80/1994).
3. [Law 13.445/2017](#), known as the Migration Law, established a new framework on migrants' rights and duties in Brazil. It highlights the importance of juridical assistance free of charge (art. 4º, IX) to the needy migrants, which is provided by the Public Defender's Office, for instance, in the administrative and judicial processes of deportation, expulsion, and extradition. It also states that assurance of the right to family reunification is a principle of the Brazilian migration policy.
4. Currently, we highlight, for example, the work of the Federal Public Defenders' Office in the Pacaraima Mission, a specific project to monitor human rights and defend migrants in [Acolhida Operation](#), created due to the recognition of the serious and widespread violation of human rights in the Bolivarian Republic of Venezuela for emergency assistance to Venezuelan migrants in situations of vulnerability. In Pacaraima, State of Roraima, we act in the humanized interview of separated or unaccompanied children to analyze protective measures in their favor, such as migratory regularization, and family reunion, according to [Joint Ordinance CONANDA/CONARE/CNIg/DPU 01/2017](#). Since the beginning of the mission, approximately 10,000 children have been assisted in the context of mobility. Also, we produced reports about the human rights situation in the area with recommendations to public authorities on issues such as education, health, and indigenous people, among others. All materials are available on the website <https://promocaodedireitoshumanos.dpu.def.br/>.
5. The Federal Public Defenders' Office has acted in many cases regarding family reunification and is struggling to try to assure this right to Haitian family members that aim to reunite in Brazil. In 2021, for example, Federal Court ordered the authorization for granting of a visa for the purpose of family reunification in favor of L.J., whose daughter was hospitalized in Brazil (BRAZIL. Judicial Decision in Process [50263802220214047200](#). Federal Justice in Santa Catarina, 2021, apud Federal Public Defenders' Office Internal Procedure n. 2021/031-03304). In the same year, in the Class Action presented by the Haitian Association "Ainteso", with DPU's participation (amicus curiae), the Federal Court allowed the entry into Brazil of family members of Haitians who live in Rio Grande do Sul, Brazil, without a visa (BRAZIL. Federal Justice. Process 5016141-65.2021.4.04.7100. Sentence Published in October 2021). Currently, in the same State, judgment is pending on another Class Action with the same request (BRAZIL. Federal Public Defenders' Office Internal Procedure n. 2021/026-03994. Federal Justice Process n. 50649326520214047100).
6. Unfortunately, Brazilian's Superior Court of Justice (STJ) suspended all decisions favorable to visa waivers. According to the monocratic decision of Minister Humberto Martins :

"The judicial determinations that oblige the federal government to guarantee the entry of Haitian migrants without a visa, determining the immediate processing and analysis of the visa application, as well as the exceptional admission of migrants or the immediate processing and analysis of the application for admission, in addition to of going against the legal norms foreseen for entry into the country, have generated a risk of compromising the national migration policy. [...] " (Suspension of Injunction and Sentence No. 3092 - SC (2022/0099380-0)

## **B. Family reunification: Contribution to draft outline for the general comment No. 6**

States must protect the human right to the family since it is the basis of society. (Universal Declaration of Human Rights, Art. 16 (3). International Covenant on Civil and Political Rights, Art. 23.) In a context of around 280 million migrant people worldwide, of which 169 million are migrant workers, cross-border movements might result in families' separation (available at [Labour migration data \(migrationdataportal.org\)](#)). Family reunification must be a linchpin of all migration policies considering that

family is extremely important both for migrants and host communities. Family reunification aids integration, and the protection of migrant human rights and psychological well-being, as well as prevents exposure to violence and other human rights violations.

“Despite States’ duty to protect families Stated in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights,[1] and CRC provision on family reunification, it is essential to acknowledge that treaty law on human mobility is fragmented and full of gaps. The international Convention Relating to the Status of Refugees (CRSR) does not foresee family reunification. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families expressly provides for family reunification but has a low level of ratification,(Ratified only by 56 states as of 01.02.2022, available at: <https://indicators.ohchr.org/>.) especially of receiving States. On the ground, solicitants face discrimination, prohibitions, or unreasonable requirements of time-lapses.” (Familyreunification: domestic and regional human rights courts perspective Lutiana Valadares Fernandes Barbosa, Ana Luisa Zago de Moraes Vol. 2 No. 1 (2022): Latin American Journal of European Studies available at <https://eurolatinstudies.com/laces/issue/view/4>)

This submission focuses on family reunification, a topic that must receive attention duly at general comment No. 6. Unfortunately, in the draft general comment No. 6, family reunification has been addressed only by the following Statements, which this contribution deems insufficient:

“IV Some commonalities and complementarities between the Convention and the Global Compact include the following:

(...)

- Family reunification

- The right to family reunification is addressed in both documents (Article 44 of the Convention and Objectives 5(i) and 7(f) of the Global Compact).”

### **1. The need to include other provisions of the Global Compact**

Family reunification is stated not only in articles 5(i) and 7(f) of the Global Compact, as cited in general comment No. 6, but also in other Global Compact’s provisions such as:

Objective 11: Manage borders in an integrated, secure and coordinated manner

11 (e) Ensure that child protection authorities are promptly informed and assigned to participate in procedures for the determination of the best interests of the child once an unaccompanied or separated child crosses an international border, in accordance with international law, including by training border officials in the rights of the child and child-sensitive procedures, such as those that prevent family separation and reunite families when family separation occurs;

Objective 16: Empower migrants and societies to realize full inclusion and social cohesion

(c) Develop national short-, medium- and long-term policy goals regarding the inclusion of migrants in societies, including on labour market integration, family reunification, education, non-discrimination and health, including by fostering partnerships with relevant stakeholders;

Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

(g) Ensure that return and readmission processes involving children are carried out only after a determination of the best interests of the child and take into account the right to family life and family unity, and that a parent, legal guardian or specialized official accompanies the child throughout the return process, ensuring that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return;

**Therefore, we claim that all Global Compact's provisions on State reunification, such as the above-mentioned, need to be expressly cited in general comment No. 6**

## **2. Takes from Regional Human Rights Courts and national courts' case law on family reunification**

A prize-winning paper analyzed domestic cases from the Oxford International Law and Domestic Courts (ILDC) database, and regional human rights courts, namely IACHR and ECHR on family reunification (African Court of Justice and Human Rights has no cases). (Family reunification: domestic and regional human rights courts perspective Lutiana Valadares Fernandes Barbosa, Ana Luiza Zago de Moraes Vol. 2 No. 1 (2022): Latin American Journal of European Studies available at <https://eurolatinstudies.com/laces/issue/view/4>). The paper concluded that:

“The point of convergence is that all decisions analyzed recognized some sort of protection to family reunification, demonstrating consensus on the family as the basis of the society and the importance of protecting it in the migration context. Decisions gravitated among a spectrum. In one extreme is the family as a lynchpin to the society and child's best interest principle; on the other, it is the national security interest.

(...)

In sum, the IACHR and ECHR decisions were, as anticipated, more protective to family, especially when child's rights when under consideration, providing relevant specifications to the migrant's rights of and corresponding State's duties regarding family reunification. All IACHR's decisions were protective, while ECHR, which has a far more developed case law in this regard, was very protective when child's rights were under consideration but balanced between national security interests and the value of family for adults. The five most recent cases from ILDC databases also demonstrate that all decisions recognized some sort of protection to family reunification. However, they also presented constraints, most of them requiring humanitarian and extraordinary conditions even when child's interests were considered.”

In that regard, the Inter-American Court of Human Rights, in Advisory Opinion no. 21, of 2014, understood that States have an obligation to proceed to carry out family reunification procedures, if necessary, in view of the best interest of the child. The Court also addressed that in the case of children who are unaccompanied or separated from their family, it is essential that States try to trace the members of their family, as long as this has been assessed as being in the best interest of the child. If possible and in keeping with the child's best interest, the State should proceed to reunify such children with their families as soon as possible (available at [https://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf)).

At the national level in Brazil, despite the provision of law Law 13.445/2017, the Migration Law, assuring the right to family reunification as a principle of the Brazilian migration policy, the Federal Public Defender's office is struggling to try family reunification for Haitians that migrate to Brazil. After some favorable decisions, such as the ones mentioned above (L.J., whose daughter was hospitalized in Brazil and the sentence in the Class Action presented by the Haitian Association), the landmark changed with the mentioned Superior Court of Justice's decision. Since then, individual claims are mostly being rejected.

**Based on the conclusions of the study cited above, and in the Federal Public Defenders' Office Experience with family reunification, we claim that general comment number 6 expressly:**

- 1. Embraces IACHR Advisory opinion 21**, according to which: “States (a) must consider family reunification in the migrants' initial evaluation process; (b) are obliged to promote family reunification for unaccompanied and separated migrant children, once regarded child's best interest; and (c) have to adapt their asylum proceedings to assure effective access to children, allowing their specific situation to be considered and assure family reunification procedures, if necessary and in consonance with the child's best interest. The case Ramírez Escobar and Others v. Guatemala, in the context of international adoption, explicit States' responsibility as regards family reunification: (a) must assure that separation is as far as possible temporary, (b) must provide support for avoiding separation or perpetuation of separation, and (c) must effort to make visits possible (Family reunification: domestic and regional human rights courts perspective Lutiana Valadares Fernandes Barbosa, Ana Luisa Zago de Moraes. Vol. 2 No. 1 (2022): Latin American Journal of European Studies available at

<https://eurolatinstudies.com/laces/issue/view/4> referring to Advisory Opinion OC-21/14, “Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection”, OC-21/14, Inter-American Court of Human Rights (IACrHR), 19 August 2014, available at [https://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_21_esp.pdf))

2. **Recognizes that States must give prevalence to child’s best interests in all cases and not only when humanitarian and other extraordinary conditions are demonstrated.**
3. **In line with The United Nations High Commissioner for Refugees (UNHCR) guidelines, expressly states that “Family reunification, whenever feasible, should generally be regarded as being in the best interests of the child.”**([1] UNHCR, Guidelines on Determining the Best Interests of the Child, 2008, p. 31, available at <https://www.unhcr.org/4566b16b2.pdf>.)
4. **Recommends that states never set a necessary waiting time for family reunification, which can threaten the family, reuniting families as soon as possible.**
5. **Recommends that states never temporarily restrain the right to family reunification, which can threaten the family.**

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