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PUBLIC DEFENDERS' OFFICE

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**INPUTS FROM THE NATIONAL DEFENDER FOR HUMAN RIGHTS (DNDH)
FEDERAL PUBLIC DEFENDERS' OFFICE (DPU) OF BRAZIL**

Brasilia, September 12th, 2022.

Subject: Call for submissions on concept paper and draft outline for its draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration

Firstly, it should be noted that the Global Compact, which was agreed for the first time by the UN Member States on 13 July 2018, is a comprehensive document to better manage the international migration, addressing its challenges and strengthening migrants' rights, contributing to sustainable development.

Although Brazil joined it in 2018, 2 years the country requested to withdraw. Thus, currently the country is not a signatory to either of the two international instruments.

Notwithstanding the forced displacement of Venezuelan indigenous peoples to Brazil, motivated by the humanitarian emergency situations in its country of origin from 2014 onwards, the Brazil received an even greater migratory flow from 2020 onwards, which intensified during the Covid-19 pandemic, with special emphasis on other migrants departing Venezuela.

In Brazil, the Operation Welcome (“*Operação Acolhida*”) was implemented with the support by international agencies (UNFPA, UNHCR, IOM and UNICEF) and aimed at managing the migratory flow, with an increase in the Federal Police's service capacity, presence of agencies that provide relevant public service to migrants (Ministry of Social Development, Federal Revenue, National Health Surveillance Agency – ANVISA and the Ministry of Women, Family and Human Rights), in addition to more than 100 civil society organizations.

DPU established the Pacaraima Committee to strengthen the permanent monitoring of the actions adopted in the context of the migratory flow in Roraima, to protect the continuity in the provision of integral and free of charge legal assistance to migrants. Its main purposes involve planning, coordinating and implementing strategic and structural actions aimed at defending fundamental rights and access to justice, communicating with other institutions, civil society and government spheres, and providing technical support, articulating and acting together with the Regional Human Rights Defender and enforcement bodies with powers in Roraima.

In 2020 and 2021, the Committee identified the following main challenges to the fulfill the rights of migrants and refugees:

1. By analyzing the data collected, DPU observed that the National Health Card - CNS, user identification document of the Unified Healthcare System (SUS), is not being issued to Venezuelan migrants who do not have a photo ID. This is extremely concerning due to the affects not only for Venezuelan migrants in general, but especially children and adolescents since in the Bolivarian Republic of Venezuela identity cards are not issued to children under 9 (nine) years of age. At this point, based on the reports, the mission finds reasonable reasons to believe that the National Health Card is not being issued to Venezuelan children and teenagers who do not have a photo ID; that is, all children under 9 (nine) years of age in a situation of migratory irregularity. (First Report of the Pacaraima Committee of the DPU, page 13);
2. We also verified that the National Health Card is not issued in some health posts for people in an irregular migratory situation. It became clear that there are health centers, especially in the municipalities in the State of Roraima, that refuse to issue the National Health Card (CNS) for Venezuelan migrants in an irregular migratory situation in Brazil. Obviously, it is impossible to know the situation of each health unit, but the primary sources indicate that at least part of the service, linked to the SUS - Unified Healthcare System, is being unduly restricted. (First Report of the Pacaraima Committee of the DPU, page 13);
3. Indigenous Venezuelans residing in Brazil are not legally considered indigenous peoples and are not covered by the Indigenous Health Care Subsystem (SASISUS), so not enough resources have been allocated for care. It was reported that health agents provide care in exceptional cases. (First Report of the Pacaraima Committee of the DPU, page 14);
4. In 2020, the DPU acknowledged deportations carried out by the Federal Police of Pacaraima of Venezuelan migrants who entered the national territory after the date on which the exceptional and temporary restriction on entry into the country came into force (Ordinance No. 652 of 01/25/2021 and earlier). That is, there were reports that as of March 2020 summary deportations were being carried out by the Federal Police of Pacaraima. This was confirmed by Official Letter n° 23/2021/DPF/PAC/RR (SEI/PF - 18016189 - Official Letter) issued by the Federal Police Delegate of Pacaraima/RR, on March 12, 2021, in response to the provocation carried out by the DPU (SEI Process No. 08161.000002/2021-09, doc. No. 4306547). (First Report of the Pacaraima Committee of the DPU, page 14);
5. Attempts to criminalize the provision of assistance by civil society entities to non-nationals in an irregular migratory situation, and to carry out summary deportations of welcomed migrants. It was found that, during the inspection, the access roads to the entities were closed by vehicles of the Federal Police and the Civil Police, and that there were armed and hooded men who forced entry to the shelter, the religious institutions

and private homes of people disproportionately to the purpose they claimed, that is, to monitor the occurrence of the crime provided for in article 268 of the Penal Code, a criminal offense of lesser offensive potential. On the occasion, women and children sheltered at Casa São José went into despair, and it was necessary to call the SAMU - Mobile Emergency Care Service to provide medical assistance. In this point, reported that a woman who was pregnant at the time of the inspection began to experience bleeding. (First Report of the Pacaraima Committee of the DPU, page 16);

6. Visiting *in loco* to Camp Orquídeas II, the DPU records that "it is believed that there are about 40 (forty) undocumented children and adolescents in a situation of vulnerability, without consistent information regarding access to education. There is no information about separated or unaccompanied children and adolescents; in fact, there are no data on this population, as no surveys or screening actions were carried out with this focus. Some families arrived after the entry restriction ordinances came into force, and others were already residing in Pacaraima, but with the economic crisis resulting from the pandemic, they began to reside there. They also reported that some children residing in the occupation were born in Brazil, during the pandemic, without consistent information regarding policies to guarantee civil registration and other basic rights to early childhood. Each person has a septic tank in their tent, but there is no water and sewage treatment. The sources consulted reported that the Pastoral do Migrante de Pacaraima provides continuous assistance with food and basic hygiene items. As it turned out, there are a significant number of children and adolescents, pregnant women and the elderly in the occupation, largely undocumented. They claim that they are receiving health care, but that there is no sanitation in the place, and they live in extremely precarious conditions, in canvas shacks.". (First Report of the Pacaraima Committee of the DPU, page 21)
7. Human rights violations at the International Bus Terminal - José Amador de Oliveira (Rodoviária) in Boa Vista/RR, including: i) Reports of physical and psychological violence against LGBTIQ+ groups who do not report because they feel insecure and intimidated due to their irregular migratory situation. Furthermore, they would no longer be cross-dressing for protection; ii) Cases of migrants housed at the Bus Terminal who were victims of human trafficking and slave-like work, and who do not report for fear of being deported, as they are undocumented; iii) Serious situation of insecurity, due to the actions of groups chosen as collaborators of the Brazilian Army in the Bus Terminal, and that would be as a result of this function imposing parallel rules through violence and intimidation; iv) Cases of gender-based violence against women, being sent to the Police Station Specialized in Assistance to Women in Boa Vista/RR; and v) A considerable number of Venezuelan children and adolescents camped at the Bus Terminal in a situation of increasing vulnerability. (First Report of the Pacaraima Committee of the DPU, page 23)

In all of the above reported cases, the Public Defenders' Office acted to put an end to situations of violations of rights and prevent further occurrences. Although the situation has not yet been fully resolved, the DPU remains vigilant and active in the region.

In 2022, a new situation of rights violations was identified: authorities requested certain documents for issuing the Registry of Natural Persons in Brazil, apostille and translations of birth certificates to parents of children who, despite born abroad, are born Brazilians, as they are the daughters of a Brazilian mother or father. This situation has been occurring mainly in the North region of Boa Vista and Pacaraima, but similar situations were also notified in Minas Gerais and other states in the Southeast and South of Brazil, according to a UNICEF report.

It requires judicial measures to assure compliance by local authorities regarding the acceptance of documents such as the one mentioned above. The Child and Adolescent Statute and the 1951 Refugee Convention do not mention the aspect of the Civil Registry of Birth, increasing the need for state bodies to bring up discussions to this matter regarding on children's fundamental rights to identification documents

On the other hand, Article 8, paragraph 2 of the UN Convention on the Rights of the Child, 1989, provides that States Parties must provide adequate assistance and protection in the cases that there is unlawful deprivation of some or all the elements that make up the child's identity.

Thus, the requirement for an apostille and official translation of the birth certificate foreign country directly collides with the need for children to carry a foreign birth certificate legalized by a Brazilian consular authority and translated by a public translator, preventing the transcription of records of births of Brazilian-born children that took place abroad.

In view of these observations, special attention should be paid to the migrant children, who are sometimes even more restricted in their rights and end up being victims of greater human rights violations.

As an example, I highlight the situation of non-issuance of identification documents for children in Venezuela and the refusal of assistance by Brazilian social policies to undocumented people, which leaves children and adolescents in a situation of aggravated vulnerability, as they do not have access to basic health and social assistance policies, in addition to admission to schools.

Therefore, the National Defender for Human Rights (DNDH) of DPU suggests that the General Comment should include highlights and guidance for States to reconsider some document requirements in relation to children and adolescents, especially when the bureaucracies of the countries make access to basic rights unfeasible, in view of their full protection and special status as a person in development. Such treatment is in accordance with international standards for the protection of children (considered as a person up to 18 years of age), in view of the age differences of who is considered a child in the national order of each country.

Moreover, we also suggest to include the prohibition on criminalization of the provision of assistance and health services to children and adolescents, or other people in a situation of aggravated vulnerability, when undocumented or in a situation of irregular migration, considering that they are policies

for the basic protection of human rights and often essential to the survival and life with dignity of these people.

Furthermore, the separation of families members due to deportation requires special highlights and guidelines in the Comment. More specifically, it is important to highlight the principle of non-refoulement and the preservation of the family unit, as they protect the rights of children and adolescents who are commonly placed in separate shelters from their families and end up without contact with them.

Document signed electronically by **André Ribeiro Porciuncula, National Defender for Human Rights.**, on 09/13/2022, at 5:35 pm, according to §2 of art. 10 of Provisional Measure No. 2,200-2, of August 24, 2001.



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