February 15, 2023

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

**Subject: Submission for HRC report 2023**

Dear Mr. Rapporteur,

Conectas Direitos Humanos, Cáritas Arquidiocesana do Rio de Janeiro, Instituto Migrações e Direitos Humanos and Serviço Franciscano de Solidariedade (Sefras) present the following inputs for the Special Rapporteur’s report on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants.

As we enter 2023, international migration remains a complex and pressing issue in the world. People around the globe continue to move across borders, seeking new opportunities, reuniting with family, or escaping conflict, poverty, and other challenges in their home countries. In recent years, we have seen increasing attention and debate around issues such as migrant rights, integration, and border control, as well as growing awareness on the impact of climate change on patterns of migration. As we look ahead to the coming year, it is clear that international migration will remain a key issue on the global agenda, requiring ongoing attention, collaboration, and innovative solutions.

1. **Please indicate how can regularization processes facilitate the enjoyment of human rights by migrants as well as their cultural, social and economic integration into the host communities, taking into account that migrants in an irregular situation live in constant fear of detention or deportation, becoming excluded from the social protection system as a result of a change affecting the regularity of their residence in the country;**

Migratory regularization through residence permit and social security registration provide means to access public services such as health care, education, social assistance and also to opening banking accounts and other services necessary to daily basic needs. In general, undocumented migrants face challenges in enrolling their children in schools, seeking care in the health system, or applying for social benefits, even though they are entitled to such rights. In this sense, fear is a feeling that often coexists with the situation of lack of regularization, preventing migrants from accessing their basic human rights.

1. **Please share examples of national and regional solutions to legalize the stay for migrants in irregular situations and indicate whether your country has adopted any bilateral, sub-regional, regional, international mechanisms, agreements, frameworks or programs, including in the context of labor migration;**

Brazil is a member of the Mercosur Residence Agreement, which guarantees that nationals of Argentina, Bolivia, Chile, Bolivia, Colombia, Ecuador, Paraguay, Peru and Uruguay can establish temporary residence in the country. After two years, migrants can apply for residency for an indefinite period, if the requirements present in article 5 of Decree 6975/2009[[1]](#footnote-1) are met, such as proof of means of subsistence of the migrant and his family group. Furthermore, Brazil has bilateral residency agreements with Argentina (Decree No. 6736/2009[[2]](#footnote-2)) and Uruguay (Decree No. 9089/2017[[3]](#footnote-3)), that allow the granting of permanent residence to nationals of these countries.

Also in the South American context, Brazil grants temporary residence to nationals of bordering countries where the Residence Agreement for nationals of member states of Mercosur and associated countries is not in force, which, in practice, includes Venezuela, Suriname and Guyana.

Finally, the Brazilian Migration Law establishes a humanitarian reception policy that currently covers people affected by the conflicts in Syria, Afghanistan, Ukraine, as well as Haitian citizens.

1. **Please share examples of promising practices, including ad-hoc programs and permanent regularization mechanisms that your country or region has adopted to promote a human rights-based approach to migration. Please indicate any specific challenges that your country has encountered in regularization processes, with particular attention on how such challenges affect migrant workers, women and girls, children, and other persons and groups;**

The Brazilian Migration Law establishes the promotion of migratory regularization as a principle in its article 3, but former president Michel Temer, who sanctioned it in 2017, vetoed an article that would guarantee the regularization of migrants who were in an irregular situation in the country at the time. Since that year, there is a bill[[4]](#footnote-4) in the National Congress that aims to regularize migrants who have entered the country by the date of its approval, but there is no deliberation on it for 5 years. The last time Brazil adopted a Law to regularize all migrants in an irregular situation in its territory was in 2009.

During the work of the Government of transition in Brazil, civil society organizations presented demands for a broad migratory regularization at the initiative of the Executive Branch. The measure would be important in view of the large contingent of people in an irregular situation, a scenario that worsened during the COVID-19 pandemic, with the Entry Restriction Decrees adopted by the government of President Bolsonaro. However, given that it would be linked to a time frame, we understand that it would not be sufficient to deal with future cases of people who do not fit the current residence permit hypotheses in Brazilian migration legislation, present in article 30 of Law 13,445/2017[[5]](#footnote-5).

Currently, there is a lack of regularization possibilities, for example, for individual micro-entrepreneurs, people recently graduated in Brazil who have not yet entered the labor market, asylum seekers who, although they do not fit the definition of refugee set out in the Geneva Convention, present some reason that makes it impossible to return to their countries of origin. Venezuelan Indigenous peoples also face great difficulty in relation to migratory regularization, as they often do not have a Venezuelan identity card.

In addition, it would be a measure of historical reparation to grant residence permits to self-declared black migrants, in view of Brazil's responsibility towards the African diaspora and that there is no modality of regularization for nationals of countries whose population is mostly black people, with a significant flow to Brazil, such as Cuba and Angola, for example.

It is also worth mentioning a specific ad-hoc Program called Operation Horizonte, which arose in a joint action between the federal government, represented by the Federal Police, the government of the State of São Paulo, represented by the Center for Integration and Citizenship, “CIC do Imigrante”, and the international agencies of the United Nations, namely UNHCR (UN High Commissioner for Refugees) and IOM (International Organization for Migration), in addition to other civil society organizations that work to support the migrant population.

The objective of the operation is to activate the entire service network for the migrant and refugee population, taking advantage of its capillarity and proximity to the public, to provide free assistance, guidance and orientation for migratory regularization, reserving vacancies for regularization services in the Superintendence of the Federal Police of São Paulo to those migrants in a vulnerable situation or who are in a situation of digital exclusion. Data released in October 2022 showed that until then, 3,786 people in vulnerable situations had been referred to regularize themselves at the institution's headquarters.

1. **Kindly highlight any contribution of migrants, including migrant workers to the economy and society of the host communities;**

In 2020, a recognized Brazilian research center, Getulio Vargas Foundation, published a study on the socioeconomic situation of the state of Roraima, located in the North of Brazil, bordering Venezuela. The research showed that the state registered positive indicators of economic activity and diversification in the period of intensification of Venezuelan flows, i.e. there was an improvement in the socioeconomic situation of Roraima after an increase in the flow of Venezuelans. The survey indicated growth in retail trade and exports, with an increase of 25% in the collection of state tax on circulation of goods and services (ICMS) between the end of 2018 and the first semester of 2019. In addition, it was identified that, between 2016 and 2017, the GDP of the region grew by 2.3%, above the average of the other Brazilian states (1.4%)[[6]](#footnote-6).

1. **Engagement with civil society organizations, national human rights institutions, and other stakeholders: Please provide information of concrete initiatives, actions and programs relating to the regularization of migrants in an irregular situation that have been developed, including jointly, by civil society organizations, national human rights institutions, and other stakeholders in your country. Please explain to what extent the work of civil society organizations and other stakeholders is taken into account to inform national policies;**

In Brazil, civil society organizations can participate in the National Committee for Refugees (Conare) and the National Immigration Council (CNIg), which discuss labor migration and refugee policies, as well as analyze requests for residence permits associated with labor and asylum requests, respectively. At Conare, civil society has a titular and an alternate seat, as well as an organization as a guest member, without voting rights. Currently, requests are being made to invite more organizations as observers, especially from Associations mostly composed and/or chaired by migrants and refugees. With regard to CNIg, its composition, which at first was inclusive, was changed under President Bolsonaro’s government – through Decrees No. 9,873/2019[[7]](#footnote-7) and No. 10,974/2022[[8]](#footnote-8) -, limiting the participation of civil society to unions and excluding associations made up of migrants and refugees and organizations that work to support this population.

An important step by the current government was the publication of Ordinance 290/2023[[9]](#footnote-9), which provides for the creation of a Working Group for the formulation of the National Policy on Migration, Refuge and Statelessness, determined in article 120 of Law 13,445/2017, and to the revision of Decree 9,199/2017, which regulates the Migration Law, with the possibility of civil society participation. Decree 9,199/2017 was edited by ex-president Michel Temer’s government, without a qualified public consultation, ignoring the proposals of experts from civil society, which resulted in a text contrary to the Migration Law itself in several provisions. The opportunity to reformulate its text will enable civil society to propose less restrictive and selective and more inclusive forms of residence permits and visas for regular entry, such as, for example, the elimination of conditions that limit access to a work visa (art. 38).

Finally, it is worth mentioning the important role of civil society organizations, in several states and municipalities, in relation to legal support, guidance on migratory regularization and pre-documentation services, providing great support to the services provided by the Federal Police.

In the cities of São Paulo and Rio de Janeiro, it is worth mentioning the Reference Center and Assistance for Immigrants (CRAI), which is a public facility, linked to the City Hall, which also fulfills the role of offering legal support and guidance to migrants.

1. **Please provide information on any specific or additional legislative and policy measures as well as challenges in the context of the COVID-19 pandemic in the implementation of regularization programs;**

Since March 18, 2020, the Brazilian government has published a sequence of 39 Decrees establishing restrictions on entry into the country, under the justification of containing the spread of COVID-19. Until December 2021, such Decrees did not allow any type of migratory regularization and access to the asylum application for migrants who entered Brazilian territory by land, with few exceptions. Even with the opening of borders that month, the restrictions imposed by the Decrees for almost two years generated an accumulation of requests for migratory regularization, which are taking a long time to be analyzed, aggravating the vulnerability of undocumented migrants.

In addition, another factor that generated a great delay in the scheduling of migration regularization services was the interruption of the services provided by the Federal Police during some months of 2020. Through three Ordinances, the Federal Police determined the extension of expired temporary documents of civil identification of migrants until September 15, 2022 (Ordinance No. 28/2022, Article 1)[[10]](#footnote-10). However, there are still reports that migrant people are struggling to regularize in some states.

1. <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6975.htm> [↑](#footnote-ref-1)
2. https://www.planalto.gov.br/ccivil\_03/\_ato2015-2018/2017/decreto/d9089.htm [↑](#footnote-ref-2)
3. https://www.planalto.gov.br/ccivil\_03/\_ato2015-2018/2017/decreto/d9089.htm [↑](#footnote-ref-3)
4. <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2141497> [↑](#footnote-ref-4)
5. <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm#:~:text=Institui%20a%20Lei%20de%20Migra%C3%A7%C3%A3o.&text=Art.,pol%C3%ADticas%20p%C3%BAblicas%20para%20o%20emigrante>. [↑](#footnote-ref-5)
6. <https://bibliotecadigital.fgv.br/dspace/handle/10438/29097> [↑](#footnote-ref-6)
7. <https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Decreto/D9873.htm#:~:text=DECRETO%20N%C2%BA%209.873%2C%20DE%2027,que%20lhe%20confere%20o%20art>. [↑](#footnote-ref-7)
8. <https://in.gov.br/en/web/dou/-/decreto-n-10.947-de-25-de-janeiro-de-2022-376059032> [↑](#footnote-ref-8)
9. <https://www.gov.br/mj/pt-br/assuntos/noticias/mjsp-lanca-observatorio-moise-kabagambe/sei_mj-22235210-portaria-do-ministro-23012023-1.pdf> [↑](#footnote-ref-9)
10. <https://in.gov.br/en/web/dou/-/portaria-n-28/2022-direx/pf-de-11-de-marco-de-2022-386096092> [↑](#footnote-ref-10)