



Asamblea General

Distr. general
21 de abril de 2023
Español
Original: inglés

Consejo de Derechos Humanos

53^{er} período de sesiones

19 de junio a 14 de julio de 2023

Tema 3 del programa

**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Visita a Polonia

Informe del Relator Especial sobre los derechos humanos de los migrantes, Felipe González Morales*

Resumen

El presente informe del Relator Especial sobre los derechos humanos de los migrantes, Felipe González Morales, contiene las conclusiones de la visita que realizó a Polonia del 12 al 15 de julio y del 21 al 25 de julio de 2022. El principal objetivo de la visita era evaluar las leyes, políticas y prácticas existentes en el país en materia de gobernanza de la migración y su incidencia en los derechos humanos de los migrantes de todo tipo, incluidos los solicitantes de asilo y los migrantes en situación irregular. El Relator Especial también examinó la situación en la frontera entre Polonia y Belarús. Entre el 16 y el 20 de julio de 2022, realizó una breve visita a Belarús con ese mismo objetivo, cuyas conclusiones están recogidas en una adición aparte al informe principal del Relator Especial ([A/HRC/53/26/Add.2](#)).

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que se adjunta al resumen, se distribuye únicamente en el idioma en que fue presentado.



Annex

Report of the Special Rapporteur on the human rights of migrants on his visit to Poland

I. Introduction

1. Special Rapporteur on the human rights of migrants, Felipe González Morales, conducted an official visit to Poland from 12 to 15 July and from 21 to 25 July 2022, at the invitation of the Ministry of Foreign Affairs. The main objectives of the visit were to assess existing laws, policies and practices in relation to migration governance in Poland and the situation of the human rights of migrants of all categories, including asylum-seekers and migrants in an irregular situation.

2. During his visit, the Special Rapporteur met with representatives of relevant governmental authorities, the national human rights institution, United Nations agencies and civil society organizations, as well as with migrants and refugees. In Warsaw, he had meetings with representatives of the Ministry of Foreign Affairs; the Ministry of Health; the Ministry of Justice; the Ministry of the Interior and Administration, including representatives of the Polish Border Guard and the Office for Foreigners; the Ministry of Education and Science; the Ministry of Family and Social Policy; and civil society organizations. He also met with legislative representatives from both the Sejm and the Senate of Poland (the lower and higher chambers of Parliament), as well as the national Commissioner for Human Rights. Outside the capital, the Special Rapporteur exchanged views with local and regional authorities, including the Mayor of Biala Podlaska, the Governor of Podlaskie Province, the Governor of Podkarpackie Province and the Deputy Mayor of the city of Przemysl. Unfortunately, he did not have the opportunity to meet with judges from district courts.

3. In addition to the above meetings, the Special Rapporteur conducted visits to facilities for migrants, including the guarded detention facilities for foreigners in Lesznowola, Biala Podlaska and Bialystok, as well as the open reception facility in Biala Podlaska. During those visits, he met and spoke privately with migrant women, men, girls and boys.

4. He also had the opportunity to visit the border crossing point at Polowce, the foreigners registration centre near the crossing point and the adjacent border area. He was shown the fence that has been erected by Poland across its border with Belarus in an area that was previously restricted. In the south of Poland, the Special Rapporteur visited the Medyka-Szeginie border crossing post at the border with Ukraine. In Rzeszow and Przemysl, he visited several medical and reception centres for refugees run by private actors, where he met with local and international civil society organizations providing support and assistance to migrants and refugees.

5. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the authorities in Poland prior to, during and after the visit. He thanks the United Nations institutions and agencies in Poland for their valuable support and assistance. He also extends his gratitude to all migrants who shared their personal testimonies with him during the visit.

II. Background information

6. Poland and Belarus share a border that is 418 km long; in addition, their common border is also an external border of the European Union. Until recently, the two countries managed the border in a largely smooth and efficient cooperative manner. Following the Belarusian presidential elections in 2020 and the post-election events in Belarus, the European Union ceased funding, suspended and/or terminated cooperation projects with Belarus and imposed several packages of sanctions in connection with the situation in the country. In early 2021, Belarus received a significantly increased number of visitors with

tourist visas from the Middle East, with the majority originating from Afghanistan, Iraq, the Syrian Arab Republic and Yemen.

7. Since August 2021, thousands of third-country nationals have attempted to enter Poland and, to a lesser extent, Latvia and Lithuania, over their borders with Belarus, using irregular ways of crossing borders, generally through the forests. The majority of arriving migrants were families with children.

8. The rise in these arrivals has triggered the adoption of a series of measures by the Polish authorities to prevent such access and to deformalize procedures to facilitate the expulsion of foreign nationals. The measures adopted, which follow a security-oriented approach, include the adoption of state-of-emergency measures restricting access to the border area, the amendment of national legislation and the construction of a steel barrier along the shared border with Belarus. The adoption of these migration strategies, based on security concerns, have negatively affected the human rights of migrants, contributing in some cases to exacerbating the already dire situation they face at the Polish-Belarusian border.

9. Of particular concern are reports of the use of pushback practices since the beginning of the humanitarian emergency. Pushbacks have become a routine element of national border governance in both Belarus and Poland, with serious negative impacts on the well-being and human rights of migrants. Other concerns in relation to the situation along the Polish-Belarusian border include reported cases of deaths, missing persons and stranded individuals at the border, including families and children, as well as instances of family separation. In Belarus, migrants were sheltered in a temporary logistics centre, which most of them were not allowed to leave unless they were headed towards Poland. In Poland, enabled by the new legislative provisions adopted in 2021, migrants apprehended after crossing the border have been immediately returned back to the border by Polish authorities and forced back into the territory of Belarus. Those who have not been returned back to the border have been placed in guarded detention centres throughout the country, under the authority of the Polish Border Guard, where they have been detained for long periods of time, facing obstacles in accessing legal assistance, adequate medical and psychological support.

10. Tensions at the Polish-Belarusian border temporarily de-escalated during the winter of 2021, with a reduced number of arrivals reported between December 2021 and February 2022. While not in the high figures observed previously, reports of third-country nationals attempting to cross the border to Poland continued throughout 2022 and up until the time of the drafting the present report, with individuals arriving in the Russian Federation and transiting through Belarus, most still originating from Afghanistan, Iraq and the Syrian Arab Republic, but also from countries in Africa, Latin America and Southern Asia.

11. On the Polish-Ukrainian border, following the invasion of Ukraine by the Russian Federation on 24 February 2022, millions of refugees have crossed the border seeking safety and protection in Poland and in other countries in Europe. As at 24 August 2022, over 5.5 million refugees had arrived in Poland by crossing the Polish-Ukrainian border. While many refugees have moved to other countries, approximately 2 million remain in Poland, where the majority have been hosted as guests by individual citizens, including members of the Ukrainian community, at their own homes. In response to this unprecedented influx of refugees, on 12 March 2022, the Polish parliament passed an act on assistance for Ukrainian nationals in connection with the ongoing invasion of Ukraine by the Russian Federation.¹ Under this law, Ukrainian nationals and their spouses fleeing the war may legally stay in Poland for 18 months, starting from 24 February 2022, including legal residency in the territory of Poland, access to health care, the labour market, education and social assistance and benefits.

¹ Law on assistance to Ukrainian citizens in connection with the armed conflict on the territory of the country (24 February to 24 August 2022), prepared by the Ministry of the Interior and Administration.

III. Normative and institutional framework for the protection of the human rights of migrants

A. International legal framework

12. Poland is party to the core international human rights treaties, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and its Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming to the abolition of the death penalty, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols of 2002 and the Convention on the Rights of Persons with Disabilities. Poland has also signed the International Convention for the Protection of All Persons from Enforced Disappearance. Poland is not, however, a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

13. Poland has ratified the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to that Status of Refugees and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Poland has not, however, acceded to the Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness.

14. Poland is one of the five countries that voted against endorsement of the Global Compact for Safe, Orderly and Regular Migration² and did not participate in the voting on the Global Compact on Refugees.³

B. Regional legal framework and relevant proceedings

15. Poland has been a member State of the European Union since 2004 and has been a member country of the Schengen area since 2007. As a member State of the Council of Europe, Poland has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).⁴ In the area of asylum law, based on the 1951 Convention relating to the Status of Refugees and the Charter of Fundamental Rights of the European Union, the European Union has developed a common European asylum system, enacting a series of regulations and directives covering different aspects of asylum procedures. These measures are directly binding on member States, which must incorporate the relevant directives into their domestic legislation.

16. In 2001, the Council of the European Union adopted a directive on the establishment of a temporary protection mechanism in the event of a mass influx or imminent mass influx of displaced persons originating from non-European Union countries who are unable to return to their country of origin.⁵ Its purpose is to establish an exceptional measure of minimum standards for giving temporary and immediate protection for those displaced who cannot return and to promote a balance of efforts between member States in receiving such persons.

17. This temporary protection is of limited duration and should be compatible with the obligations of States members of the European Union under instruments of international law.

² See [A/73/PV.60](#).

³ See [A/73/12 \(Part II\)](#).

⁴ Poland has not ratified Protocol No. 12 to the European Convention on Human Rights.

⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

In particular, it must not prejudice the recognition of refugee status pursuant to the 1951 Convention relating to the Status of Refugees, as amended by its 1967 Protocol.

18. In March 2022, in response to the influx of displaced persons from Ukraine following the invasion of the country by the Russian Federation, States members of the European Union unanimously agreed to activate the above directive for the first time,⁶ giving those fleeing war in Ukraine the right to temporary protection for a renewable period of one year, until March 2023.⁷

C. National legal and institutional framework

National legislation on migration

19. In Poland, the main national legislation on the issues of migration and asylum includes:

(a) The national Constitution of 2 April 1997, which guarantees equality in law of all persons and prohibits discrimination against anyone (art. 32). Article 56 (1) recognizes the right to seek asylum in Poland, in accordance with international agreements to which Poland is a party. Article 37.1 stipulates that “Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution”, but exemptions from this principle with respect to foreigners are allowed if specified by statute in accordance with article 37.2;

(b) The Act on foreigners of 12 December 2013 sets out principles and conditions governing entry, transit, residence and departure from the territory of Poland; the Act on granting protection to foreigners within the territory of the Poland of 13 June 2003 regulates the granting of all forms of international protections, including temporary protection, and provides for social assistance for the beneficiaries; and the Act on the entry into, residence and exit from Poland of nationals of European Union and their family members of 14 July 2006 provides the rules and conditions for entry, stay and exit from the country;

(c) The Act on assistance to citizens of Ukraine in connection with the ongoing invasion of Ukraine by the Russian Federation of 12 March 2022. New provisions that entered into force on 12 March 2022 apply retroactively from 24 February 2022. The Act sets out specific rules for legalizing the stay of Ukrainian citizens (and their spouses who do not hold Ukrainian citizenship) who have come to Poland from Ukraine in connection with military operations conducted in Ukraine and of Ukrainian citizens holding a Pole’s Card (*Karta Polaka*), who, together with their immediate family, have come to Poland because of the aforementioned military operations.

Legislative amendments

20. Following the unprecedented movements of migrants at the Polish and Belarusian border in the summer of 2021, Poland introduced changes to relevant domestic laws on migration and asylum, namely the above-mentioned Act on foreigners and Act on granting protection to foreigners within the territory of Poland. Separately, new provisions were introduced to the regulation of the Ministry of the Interior and Administration of 13 March 2020 on the temporary suspension or limitation of border traffic at specific border crossing points to restrict the movement into Poland from Belarus, the Russian Federation and Ukraine, in connection with the coronavirus disease (COVID-19) pandemic. These changes have enabled Polish border guards to return migrants apprehended while attempting to cross into Poland outside official crossing points directly back to the border. Moreover, legislative

⁶ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

⁷ If, after this period, reasons for granting temporary protection persist, it will be automatically extended for a period of 6 months, twice, until 4 March 2024. Beyond that date, the Commission may propose that the Council extend the temporary protection by up to another year, until 4 March 2025.

amendments have restricted the possibility for persons apprehended in the border area to seek asylum.

21. On 20 August 2021, a decree issued by the Minister of the Interior and Administration amended the above-mentioned regulation, adding new provisions allowing the removal of persons who had crossed the border outside official procedures and for the return back to the State border of persons found at border crossing points where border traffic has been suspended.⁸ The decree did not provide exceptions for persons seeking international protection, thereby significantly limiting the ability of foreigners entering Polish territory in an irregular manner from applying for international protection.

22. On 14 October 2021, the Sejm passed a bill (the so-called “expulsion law”) amending the Act on foreigners and the Act on granting protection to foreigners, which entered into force on 26 October 2021. Changes made in the Act on foreigners empowered the commander of the Polish Border Guard to order the immediate detention and removal of any persons who have not crossed the border at an official border crossing. Although such removal orders may be appealed to the commander of the Border Guard, such appeals do not have a suspensive effect; as a result, orders are immediately enforceable and come with a ban on re-entry into Poland and the entire Schengen area for a period of between six months and three years, regardless of protection needs.

23. Amendments introduced to the Act on granting protection to foreigners gave the authorities the discretion to disregard applications for international protection made by foreigners who were stopped immediately after having crossed the border outside of an official border crossing, unless they arrived directly from a territory where their lives or freedoms were at risk of persecution or serious harm, gave credible reasons for crossing the border irregularly and claimed asylum immediately upon crossing the border.

Migration management system

24. The Polish Border Guard, as established under the Act on the Border Guard of 12 October 1990, is a uniformed and armed formation charged with protecting the borders of the State, both on land and at sea, organizing border traffic control and preventing and combating irregular migration. It is a law enforcement and a state authority with the same powers as the police. Border guards operate throughout the whole country, not only near the border line.

25. Border guards are responsible for receiving asylum applications in Poland. Officials are responsible for filling out application forms for international protection based on the information given by the applicants. After accepting and processing such applications, the officials transmit them to the Office for Foreigners, which is in charge of assessing applications and international protection needs.

26. The Polish Border Guard is also the main institution responsible for overall aspects of all guarded centres for foreigners, namely immigration detention facilities, including their general management, administration and day-to-day operations. Whether to place an individual in open or guarded facilities during an asylum procedure is largely at the discretion of the Border Guard, although the Office for Foreigners has the power to release individuals from closed to open facilities. Judicial authorities issue decisions on the placement of foreign nationals in a guarded centre for foreigners at the request of the commanding officer of a Border Guard post or unit. The commanding officers and the courts are responsible for issuing decisions on the use of alternative measures to detention. Article 406 (1) of the Act on foreigners sets out the criteria under which the Border Guard shall issue a decision on releasing a foreigner from a guarded centre.

27. The Office for Foreigners is the competent institution for handling administrative matters related to the entry, transit, stay, residence and exit of foreigners in Poland. It also

⁸ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (10 September 2021), Opinion-No. MIG-POL/428/2021 [JB]: Urgent opinion on draft amendments to the Aliens Act and the Act on granting protection to aliens on the territory of the Republic of Poland and Ministerial regulation on temporary suspension of border traffic at certain border crossings, para. 32, available at https://www.osce.org/files/f/documents/3/3/498252_0.pdf.

handles administrative decisions involving international protection in Poland, upon receiving asylum applications from the Polish Border Guard, and is responsible for providing social assistance and medical care to those seeking protection. The Office is responsible for appellate procedures in cases involving the legalization of the residence of foreign nationals in Poland and expulsion orders. Although the placement of asylum-seekers in general is ordered by the Court following the request of the Border Guard, the Head of the Office, based on an assessment of the case, has the competence to release asylum-seekers from closed detention facilities.

28. The Polish Border Guard and the Office of Foreigners report to the Polish Ministry of the Interior and Administration, which is responsible for the interior security of the country and law enforcement forces and is in charge of issuing Polish identity documents, including national passports. The Ministry also has the function of regulation migration issues, managing the integration and registration of migrants and combating irregular migration.

National human rights institutions

29. The Commissioner for Human Rights is a constitutional institution appointed to oversee the protection and observance of human and civil rights in Poland. The Commissioner's powers and competences are established under the Constitution, as well as in the Act on the Commissioner for Human Rights of 15 July 1987.

30. The office of the Commissioner also acts as the national human rights institution, the national mechanism for the prevention of torture (as visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment), the independent equality body (referred to in the European Union directives on anti-discrimination) and the independent body monitoring the implementation of the Convention on the Rights of Persons with Disabilities. The Commissioner's performance is independent from other State authorities; the Commissioner is accountable only to the Sejm.

IV. Admission, reception and housing of refugees fleeing Ukraine

31. As at 23 February 2023, over 9.4 million refugees fleeing the war in Ukraine have crossed the Ukrainian-Polish border to Poland seeking protection. The majority of refugees are women and children. Approximately 1.3 million are staying in Poland, and over 1.43 million Ukrainian citizens have applied for a "PESEL" number, an identification number for people residing in Poland that is required to access rights provided under the order on temporary protection. Under the Act on assistance for Ukrainian nationals in connection with the ongoing invasion of Ukraine, Ukrainian nationals and their spouses fleeing the war may legally stay in Poland for 18 months, until 24 August 2023. They are granted full access to the Polish labour market and health-care system; Ukrainian children are granted full access to school, on the same basis as Polish nationals. The Act has established a governmental Relief Fund for Ukrainian War Refugees, with nearly 10 billion Polish zlotys (Zł) (approximately €2 billion) earmarked funds to provide assistance to Ukrainian citizens. Ukrainian refugees are entitled to a one-off cash assistance of Zł300 (approximately €63) per person, intended to cover expenses for food, clothing, footwear, personal hygiene products and housing fees. As at 20 February 2023, 222,685 individuals have benefited from this allowance. Ukrainians are also entitled to other social support and benefits, including free psychological care and services, monetary and non-monetary benefits from social assistance system, as well as food and a periodic allowance. Ukrainian citizens also receive support for families and children, including a monthly allowance for children (the "500+ benefit", a monthly allowance of Zł500, approximately €105 per child) and access to funding to reduce the fees for institutional childcare and other family care programmes run by the Government. The provisions of this special law on assistance for Ukrainian nationals do not apply to third-country nationals who also fled Ukraine. Instead, amendments were introduced to the Act on providing foreigners protection on the territory of Poland, transposing goals set out in the temporary protection directive of the European Union. Although refugees fleeing the same war are all generally admitted in Poland, the applicable legal framework and the consequent entitlements are not the same, depending on their nationality and migration status in Ukraine. Affected individuals include holders of permanent residence permits and particularly those

in irregular situations, such as undocumented migrants and those waiting for a final decision on their applications for international protection in Ukraine.

32. In the weeks before the outbreak of the war, Poland prepared to receive and host refugees from Ukraine. However, the unprecedented number of refugees approaching the Polish border within a very short period of time exceeded expectations, posing significant challenges to the Border Guard and local authorities of Podkarpackie and Lubelskie Provinces, the two provinces that share a border with Ukraine. Polish border entry capacity was maximized and procedures were simplified to facilitate the speedy entry of refugees. Authorities at the provincial level, in close cooperation with officials of the Border Guard, the fire department, the police and the national railway service mobilized necessary resources to receive refugees, provide initial support and facilitate their onward journey to other parts of Poland or neighbouring countries.

33. Reception centres were established to address the medical and humanitarian needs of refugees; a first-point contact network was also set up to provide information on transportation and accommodation; 101 buses belonging to the State fire service and the police were dispatched to transport Ukrainian citizens fleeing the war; and approximately 2,000 private buses were placed at the disposal of the commander of the State fire service. Free rail transport was provided to refugees to travel to other regions in Poland or to neighbouring countries. From 24 February to 30 June 2022, 2,350,000 Ukrainian citizens benefitted from free travel on the intercity trains run by the Polish State railway. Since the outbreak of the war in Ukraine until July 2022, the Polish Government has spent over €670 million on the reception facilities established at the border to provide basic aid, meals and transportation for refugees. Individuals, humanitarian actors and international organizations have also been actively involved in providing humanitarian, medical and other assistance to refugees arriving through the Polish-Ukrainian border. Donations of food and non-food items, medical and hygiene products are delivered to the reception points. The International Organization of Migration set up a tent after the border crossing point to provide case management support to refugees, especially third-country nationals who need assistance, including legal counselling and accommodation referrals.

Housing

34. While many of the approximately 5.5 million refugees who crossed the border between February and August 2022 moved on to other countries in Europe, approximately 2 million remained in Poland, with the majority being hosted as guests by individual citizens, including the Ukrainian community in Poland, at their private homes. Most of these hosts have applied for financial subsidies provided by the Government, although for various reasons, including the time limitation of the granting of subsidies, many are covering the expenses by themselves. Other Polish citizens, often groups of friends, have taken the initiative to convert houses, shopping centres or public buildings to shelters for refugees. These private shelters provide free housing solutions for the most vulnerable refugees, including those who have just arrived and are still figuring out their next steps; those who await settlement in foreign countries; big families, including Roma families, that are challenging to accommodate at private houses; and people with limited financial capacity and/or social connections.

35. At the provincial level, Governors have set up temporary collective accommodation points, providing food, medical and psychological care and information to those in need of catering and shelter. As at 15 February 2023, 495,434 individuals have benefitted from such accommodations. At the national level, a cash benefit of Z140 (approximately €8.5) per day per assisted Ukrainian citizen is provided by the Polish Government to any entity, especially individuals running a household, at its own expense, providing accommodation and meals to a citizen of Ukraine for a period not exceeding 120 days. As at 31 January 2023, over 1.6 million Ukrainian citizens have been covered. Since 1 July 2022, the government subsidy has been limited to new arrivals for 120 days, and to existing beneficiaries with vulnerabilities. In the meantime, many individual hosts have been sacrificing space in their own homes for months. Following new amendments to the Act on assistance to Ukrainian citizens of 12 March 2022, which were introduced in January 2023, Ukrainian refugees, with

some exceptions, will be obliged to pay for accommodation in collective shelters after the initial 120-day period.

36. It is necessary to assess the sustainability of the current housing model, particularly regarding the financial and social pressure on individual hosts. Social tensions are increasing amidst a rise in rental market prices, increasing inflation and perceived hindered access to social services and health care for Polish nationals. It still remains challenging for the most vulnerable to find proper shelter, including those with physical or mental disabilities, older persons, single mothers with children, persons belonging to ethnic minority groups, as well as Roma, and refugees of certain nationalities, such as Russians and Belarusians, owing to the role of their countries of origin in the war. Without any concrete plan or alternatives, some refugees stay for several months at reception centres designed as transit places for short stays of two days.

Health care

37. The Polish health-care system has made tremendous efforts to address, accommodate and improve the physical and psychological conditions of refugees, including the most vulnerable. Ukrainian citizens are entitled to medical care, including health-care services. It is worth mentioning that Polish authorities have coordinated free medical treatment for Ukrainian refugees not only in Poland but also for Ukrainian patients relocating to other countries members of the European Union/European Economic Area for the purpose of the continuation of medical treatment.

38. However, the process of receiving and providing health care to the refugee population has revealed issues with some pre-existing features of the Polish system. Specifically, the Special Rapporteur expressed his concern about the very restricted access to legal abortion for refugee victims of rape in the current context of an ongoing armed conflict in Ukraine, making it virtually non-existent in practice and has exchanged views with relevant authorities and members of the Parliament in this regard.

39. Under the Act on family planning, human embryo protection and conditions of permissibility of abortion of 1993, abortion is illegal in Poland with the exception of two circumstances: when the pregnancy endangers the life or health of the woman; and when the pregnancy results from a crime, such as rape. In addition to this restrictive legal framework, the Special Rapporteur was also concerned that practical and other obstacles prevent refugee women from accessing safe and legal abortion. These obstacles include the stigma associated with abortion, conscience-based refusal by doctors, ineffective procedures and difficulties in obtaining formal authorization from prosecutors, which is a requirement to access legal abortion procedures under the second exception. Understanding that the abortion law is applicable to all women in Poland, in the current context of the armed conflict in Ukraine, refugee women, particularly refugee victims of rape, may be particularly affected by such limitations in law and in practice.

Access to the labour market

40. With an increasing number of Ukrainians joining the labour market, more and more refugees are becoming financially independent and able to cover housing and other expenses on their own. According to official statistics, as at August 2022, approximately 75 per cent of adult Ukrainian citizens residing in Poland have taken up legal gainful employment.

41. To facilitate the effective integration of Ukrainian refugees into the Polish labour market, the Government recognizes university diplomas obtained in Ukraine as equivalent to corresponding Polish diplomas. Several professions, including drivers and seafarers, have also benefitted from facilitated procedures to allow them to work in Poland; and the Ministry of Health, under a simplified system, has authorized health professionals who hold specialist diplomas issued outside the European Union to work in a number of health professions in Poland. To enable teachers from Ukraine to work in Polish schools as teaching assistants, intensive preparatory courses in the Polish language are provided by a designated national teacher training institute. Other services, programmes and training opportunities are made available to enable the best possible matching of skills and professional qualifications of

Ukrainian candidates with job offers from employers and to support Ukrainian entrepreneurs in setting up their own businesses.

42. Despite efforts made by authorities to facilitate the economic participation of mothers of children below school age through the creation of more childcare places, challenges remain. While the overall capacity of institutional childcare has increased, it has not effectively addressed the needs of these mothers, who are also challenged by the language barrier and lack of skills.

Education

43. School-age Ukrainian children can either continue to pursue their Ukrainian schooling online or attend public Polish schools. The delegation learned that over 200,000 Ukrainian school-age children attended Polish schools in the second semester of the school year 2021–2022. At the time of the visit of the Special Rapporteur, in July 2022, many students and parents had not made up their mind whether to enrol in Polish schools for the school year 2022–2023 owing to uncertainties relating to the war. Many Ukrainian families still hoped to return home soon. Concerns were raised over a potential sudden increase in newly registered students and lack of capacity in the education system to make adjustments owing to that possibility. The Special Rapporteur was informed, however, that the Ministry of Education was ready to integrate 400,000 Ukrainian students into the Polish education system for the school year of 2022–2023. It remains challenging to ensure meaningful integration of Ukrainian children into Polish schools because of a number of factors, including the limited availability of adaptation classes and the overstretched capabilities of schools and teachers.

44. During school holidays, summer camps and other activities have been organized for Ukrainian children in order to familiarize them with the communities they live in and to facilitate integration. For instance, in Tomaszow Lubelski, the “Krokus” community centre, in cooperation with the city hall, has organized therapeutic workshops for Ukrainian children.

Vulnerable populations

45. In March 2022, the Ministry of Justice and the Ministry of Family and Social Policy, in cooperation with headquarters of the Polish Border Guard, developed a procedure for dealing with unaccompanied minors crossing the border. Under this procedure, each unaccompanied Ukrainian child is registered in the national system and assigned a temporary guardian. In the event that it is not possible to appoint a temporary guardian, the child is supported within the Polish foster care system. However, it remains unclear whether the safeguards available under Polish national law apply to unaccompanied or separated Ukrainian children.

46. Ukrainian refugees with disabilities receive support through a three-module programme under the State Fund for the Rehabilitation of the Disabled aimed at securing their rehabilitation and residence needs, in particular housing, food, social needs, social integration, specialized therapeutic and psychotherapeutic counselling and preparation for entering the labour market. Over 1,460 persons with disabilities and their caregivers have benefited from transportation and accommodation support. Additional benefits for Ukrainian refugees with disabilities are also available under the family benefits scheme. Information received indicated that proving disability remains a major challenge.

47. Support and protection of victims of trafficking are provided by the national intervention and consultation centre for victims of human trafficking. The main services of the centre include preventive telephone counselling, provision of shelter and basic living needs, crisis intervention and reintegration assistance. In response to the situation in Ukraine, relevant ministries have also launched information campaigns, developed relevant procedures, organized training sessions and issued guidance notes on the identification and protection of victims of human trafficking.

48. More than 10,000 Ukrainian refugees who have become victims of crime have received assistance. As at 24 August 2022, the crime victims helpline had handled 119,134 calls about cases war-related crimes that occurred on Ukrainian territory.

49. Other groups with vulnerabilities, such as Ukrainian single mothers with several children and ethnic minority groups, including Roma families, are entitled to the support for families and children provided by the Government. Older persons and individuals with limited social and financial resources are also among the most vulnerable. As mentioned above, these groups benefit greatly from support and assistance provided by private reception centres and shelters as well as by international humanitarian actors. Owing to the uncertainty created by the ongoing war in Ukraine and the lack of options to establish a new life on their own, most of these groups of vulnerable people may be obliged to continue to rely on humanitarian assistance.

50. Because of the two-fold approach to refugees in the application of legislation and policies, and the fact that the majority of government programmes in response to the war in Ukraine are designed to assist Ukrainian refugees, third-country nationals, especially those who were already in irregular situations in Ukraine, cannot benefit from the wide range of support and financial aid designated for Ukrainians. Third-country nationals in need of assistance often face discrimination in accessing services and benefits and have to rely on assistance provided by private or international humanitarian actors. Many with multifaceted vulnerability face tremendous barriers to recovery and integration.

V. Border management at the shared border between Poland and Belarus

A. Situation at the Polish-Belarusian border

51. Cooperation between Poland and Belarus in managing their common border changed drastically after the presidential elections in August 2020 in Belarus and the violent repression of peaceful protests in the post-election period by Belarusian authorities and the overall deterioration of human rights, democracy and the rule of law in the country. Following these events, the European Union ceased funding and suspended and/or terminated a range of projects with Belarus, including in the area of cross-border cooperation and international technical assistance. Since October 2020, the European Union has imposed seven packages of sanctions in connection with the situation in Belarus.⁹ As a result, border management relations between Poland and Belarus have deteriorated significantly since 2020, with tensions at the shared border escalating after August 2021.

52. In the summer of 2021, there was a significant increase of visitors with Belarusian tourist visas arriving in Minsk from countries of the Middle East, mainly families with children. Most were from Iraq and the Syrian Arab Republic, and many came in groups under “group visas” issued by Belarus.¹⁰

53. Tensions at the Polish-Belarusian border initially arose in August 2021, when a group of 32 Afghani migrants (4 women, 27 men and 1 girl) reached the normally restricted border area between Poland and Belarus near the town of Usnarz Gorny, requesting international protection from the Polish side. Their requests for protection were ignored and they were not allowed to enter Polish territory, nor were they allowed to return to Belarus. The group remained stranded at the border area for weeks, between two lines of armed soldiers and border guards, with limited access to food, clean water, adequate shelter and sanitation facilities. It was at that point in time that the Special Rapporteur on the human rights of migrants started following the situation of migrants at the border between Poland and Belarus.¹¹

54. In early November 2021, the situation at the border escalated when approximately 2,500 migrants marched along the highway to the border area in the Grodno region of Belarus. It was believed that the migrants intended to cross to the Polish side and apply for

⁹ European Union Sanctions Map, available at <https://www.sanctionsmap.eu/#/main>.

¹⁰ See A/HRC/53/26/Add.2.

¹¹ See UA POL/2021, AL BLR 7/2021 and AL POL 3/2022. These and all subsequent communications are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

asylum in the European Union, specifically in Germany. Individuals with protection needs were identified within the group, including children aged from 2 months to 13 years, pregnant women, persons with disabilities and older persons. Since that time, migrants, including families with children, have regularly attempted to enter Poland by crossing its border with Belarus.

55. Restrictions were first imposed along the border area on 2 September 2021, under the declaration of a state of emergency by the President of Poland. The state of emergency, which was motivated by possible threats to security and public order, introduced an “entry ban” zone along areas within three kilometres of the border with Belarus, covering 183 localities in Podlaskie and Lubelskie Provinces.

56. Initially valid for 30 days, the state of emergency was extended on 30 September 2021 until 2 December 2021. Amendments were introduced to this legislation on 30 November 2021, shortly before the expiration of the state of emergency, providing for a “permanent state of exemption”, which further prohibited non-residents from entering the same 183 localities. New provisions authorized the Minister of the Interior and Administration to impose restrictions on freedom of movement similar to those imposed by the state of emergency in areas located within 15 kilometres of the border with Belarus, until 1 March 2022.

57. From 2 March 2022, Poland extended the law limiting access to the same areas adjacent to the Polish-Belarusian border until 30 June 2022.¹² Starting in early December 2021, media outlets were given access to the exclusion zone after obtaining prior accreditation from local commanders of the Border Guard, but this access remained strictly regulated and journalists were closely accompanied and transported in official vehicles of the Border Guard along pre-determined routes.¹³ While the state of emergency was lifted on 30 June 2022, a prohibition to access a 200-meter-wide strip along 200 kilometres of the border remained, reportedly because of the ongoing construction and electrification of a steel border barrier.

58. Poland started the construction of a physical barrier through the protected forest along the Polish-Belarusian border on 25 January 2022, to “protect the national border and help counter irregular migration”. The President signed the law for its construction in August 2021. The barrier, which is made of steel and topped with razor wire, 5.5 metres high and 186 kilometres long and built on the land sections of the State border from the northern bank of the Bug river to the Polish-Belarusian-Lithuanian triangle, excluding watercourses.

B. Continuing arrival of migrants through Belarus

59. Following the suspension of visas by the Belarusian authorities for targeted nationalities in November 2021 and the closure of the Bruzgi logistics centre on the Belarusian side of the border in March 2022, the situation at the border seems to have calmed down to some extent. However, as confirmed by several sources, a number of migrants remain stranded in the forest and subject to “pushbacks” from both sides. Reports indicate that foreigners continue to arrive in Belarus, although it is difficult to assess how many remain in the country. Unlike the movements in 2021, there is a newly established migration route through the Russian Federation and Belarus towards Poland, perceived by migrants as a safer way into Europe than through the Mediterranean Sea. This route, however, also attracts smugglers.

60. Attempts to cross the border continue to be detected on a daily basis by governmental authorities and civil society actors who provide humanitarian help to migrants in both countries. Similar to the situation in 2021, the presence of families and children among newly arriving migrants increased again over the summer of 2022 after a temporary decrease during

¹² Reply from Poland to [AL POL 3/2022](#) (received on 27 May 2022).

¹³ Council of Europe, Commissioner for Human Rights, Third-party intervention under article 36, para. 3, of the European Convention on Human Rights, in the case of *R.A. and others v. Poland*, Application No. 42120/21, Strasbourg, 27 January 2022, available at <https://rm.coe.int/third-party-intervention-before-the-european-court-of-human-rights-in-/1680a5527a>.

the winter. Most attempts to cross the border reportedly take place at night, including attempts to cross the Polish border barrier using tunnels, ladders and ropes, as well as attempts to cross the swamps, which pose a greater risk to the migrants' lives. In addition, as of November 2022, more than a year after the unfolding of the humanitarian situation at the border, there were still reports of persons being stranded in the forest for up to 12 days without access to clean water.

VI. Human rights impact on migrants and refugees

A. Pushbacks

61. As mentioned above, in October 2021, Poland introduced legislative changes to relevant laws on migration and international protection. The amended provisions enable the Polish Border Guard to immediately return to the borderline migrants who are apprehended while attempting to cross into Poland outside official crossing points. The legislation does not differentiate between children and adults.

62. In practice, migrants who are detected while crossing the border outside official points are taken to Polish Border Guard posts. If applicable, border guards issue a return order under the provisions of the Act on foreigners and the decision is immediately executable. Information received indicates that migrants do not have access to legal aid during this process. For those migrants that require medical attention, assistance is provided at the foreigners' registration centre. Most migrants are provided with a "survival package", containing food, water and a thermic blanket before being pushed back to the Belarusian side of the border. Border guards reported that these returns are conducted at the most convenient time, calculated in order to avoid detection by Belarusian border guards, regardless of the time of day or weather conditions. Sometimes returns are conducted during the night.

63. Medical and humanitarian assistance coordinated by local emergency services and civil society organizations is provided to migrants in need prior to their expulsion. In some instances, border guards have been involved in the arrangement and delivery of humanitarian assistance to migrants in need and in search and rescue operations. However, the Special Rapporteur notes with concern that the ultimate goal of the Polish Border Guard seemed to be to push migrants back to the other side of the border once they have regained some physical strength.

64. According to official data collected by Polish governmental authorities, 43,881 persons crossed the Polish-Belarusian border between 2021 and July 2022, mainly concentrated on the section controlled by the Podlaski regional unit of the Border Guard. Of that number, 41,181 persons were "redirected" back to the border line. Border guards are obliged to draw up a report on a person who has been arrested for irregular border crossing and to issue an order to remove that person from Poland. However, if that same individual is apprehended again by the Polish Border Guard, the immediate return takes place under the provisions of the regulation on temporary suspension on border crossings, amended in August 2021, which does not require that a legal procedure or a return order be initiated against the migrant for his/her removal from the territory. While many migrants have been pushed back and forth across the border multiple times, only the first removal is recorded and conducted under official procedures. Therefore, it is challenging to obtain accurate data on the full scope of pushback practices in Poland, considering that some migrants may be stranded in the forest for several weeks and been subject to several pushbacks from both sides.

65. The Special Rapporteur is particularly concerned about allegations of the use of violence by the border guards of both Poland and Belarus in the course of pushing migrants back and forth. Reported allegations indicate the use of water cannon, the destruction of phones and other electric devices, the use of attack dogs and of pushing, threatening with weapons and intimidation. Although denied by both States, the delegation gathered testimonies and evidence inside and outside the countries and witnessed the results of such violence perpetrated against migrants, including physical injuries and mental health consequences, such as stress and trauma. On both sides of the border, fear of being subjected

to further acts of violence or other repercussions, such as pushbacks or detention, has prevented affected migrants from seeking medical and non-medical assistance to address their needs. Migrants of African descent seem to be among the most affected, as well as those who are perceived to be Muslim.

66. The installation of the metal fence along the border on the Polish side has reportedly reduced the interaction between migrants and border guards on both sides, although instances of violence committed by border authorities from both countries continued to be reported between August and October 2022. In addition, attempts to cross the wall have led to accidents, causing physical injuries that in some instances required hospitalization.

67. The Special Rapporteur notes with regret that despite the evidence gathered, both sides denied allegations of abusive and violent tactics by their own border guards. As a result, there has been a lack of internal investigation and the creation of a culture of impunity, which has contributed to the recurrence of violence.

68. As mentioned above, Polish border guards are responsible for receiving asylum applications. The Special Rapporteur learned that, in the presence of staff of the national Commissioner for Human Rights, border guards accepted all asylum applications. However, he has also received information indicating that requests to apply for asylum by migrants apprehended at the border were repeatedly ignored by Polish border guards.

Loss of life and migrants stranded at the border

69. A number of migrants have lost their lives on both sides of the border since 2021. At the time of the visit of the Special Rapporteur, the Belarusian authorities had documented four such cases and had collected data on registered deaths and affected migrants, while Polish authorities had investigated 10 deaths. The total number of deaths recognized by the authorities of both countries does not correspond to the information gathered by the delegation. According to public sources, at least 19 migrants died in the forest in 2021, at least 13 in 2022 and as many as 195 persons remain missing. Given the difficulty for civil society actors and the media to monitor and document the situation owing to restricted access to the border area, the Special Rapporteur is concerned that these figures could be higher.

70. As a result of practices adopted by both States, hundreds of migrants, including families and children, remain stranded at the border, unable to access the territory of Poland and at the same time prevented from re-entering Belarus. They have been forced to stay in the forests, sometimes hidden, for several weeks in some instances, where they have been exposed to extreme cold and heavy snowfall during the winter, without access to food, shelter, clean water, warm clothes, sanitation facilities, health care services or any other form of assistance. Many have suffered hypothermia, risked serious illness and injury. The situation continues to raise grave concerns, as three more persons were reported dead at the border in January 2023.

Independent monitoring

71. Volunteers and activists have been barred from accessing the border between Poland and Belarus, and some have even faced prosecution for providing humanitarian assistance to migrants in distress at the border. On the Polish side, restricted access to the border area imposed since September 2021 have severely hindered access by representatives of civil society organizations and the media as well as humanitarian actors. It was not possible for any independent mechanisms to conduct monitoring activities on the situation at the border. Furthermore, human rights defenders, civil society actors and local residents providing help to migrants at the Polish-Belarusian border have also been the target of harassment and intimidation by law enforcement officials, including in areas outside restricted areas.

B. Deprivation of liberty of migrants, including asylum-seekers

72. Polish domestic law allows for the detention of migrants and asylum-seekers in guarded centres for foreigners, which are closed immigration detention facilities under the control of the Border Guard. According to article 403 (1) of the Act on foreigners, a foreigner,

for the purpose of the return procedure, may be placed in a guarded centre for a period no longer than three months. The period of detention may be extended but according to article 403 (3), it may not exceed six months. Only in exceptional situations, when a foreigner does not cooperate in the identification process, may detention be prolonged for a specified period of time, but no longer than 12 months. Moreover, pursuant to articles 89 (1) and (5) of the Act on granting protection, a foreigner under the asylum procedure may be placed in a guarded centre for a period of up to 60 days, which may be prolonged but may not exceed six months. However, since, in practice, different procedures may overlap, the period of detention could potentially extend up to 18 months.

73. The provisions of the Act on foreigners and the Act on granting protection to foreigners introduced the possibility of applying alternative measures to the detention of foreigners.¹⁴ Such a decision may be adopted at the stage of assessing a foreigner's situation by a border guard, as well as at a later stage, when the court examines the application submitted by the border guard for placing a foreigner in a guarded centre. Both acts allow families with children to be placed in guarded centres. Unaccompanied children under return procedures can also be detained if over age 15 and meeting certain conditions.

74. Border guards, based on information received from initial contact, assess whether to place individuals intercepted at the border in a guarded facility and submit application forms to the court for its consideration. Courts seem to accept these requests as a standard practice. However, questions as to the independence of the decisions of the courts arise since, pursuant to these applications, migrants and asylum-seekers are routinely ordered to be placed in guarded facilities. While placing asylum-seekers in guarded facilities seems to be the general practice, border guards have applied alternatives to detention in exceptional circumstances, for instance, when migrants present physical or mental impediments or disabilities. In such cases, border guards may refer migrants to shelters run by the Dialogue Foundation, a local non-governmental organization, where migrants are housed and attended to by civil society actors. The cost of the accommodation of migrants is covered by the Border Guard. These cases, however, remained exceptional, as border guards consider the risk of migrants fleeing from these shelters is elevated and therefore have little incentive to use them. It is worth mentioning that between the beginning of 2021 and 1 July 2022, the Head of the Office for Foreigners released 502 migrants from guarded detention centres.

75. The Special Rapporteur acknowledges efforts made by Polish Border Guard in improving the conditions of stay in closed facilities of Lesznowola, Biala Podlaska and Bialystok. Multiple teams are deployed to provide information on relevant procedures, social activities, educational programmes and medical and psychological support to detainees at the closed facilities. However, in some instances, the lack, inter alia, of access to independent legal counselling, insufficient mental health care, limited outdoor time and lack of efficient communication tools remain issues of concern.

76. In practice, migrants, including children and pregnant women, spend several months in closed detention facilities. The majority of those detained are third-country nationals who were apprehended crossing the Polish-Belarusian border. Individuals held in these centres do not have access to accurate information regarding the state of the proceedings which they are subjected to, such as return and asylum procedures. As observed by the delegation, most migrants did not know for how long they would remain in detention. The uncertainty caused great amount of distress and anxiety and exacerbated the deterioration of their psychological health.

77. Despite the possibility provided under Polish law allowing border guards to apply alternatives to detention, and the fact that the Office for Foreigners has the power to release asylum applicants from detention, and is doing so in several cases, the Special Rapporteur witnessed many migrants in the most vulnerable situations who remained detained in closed facilities, including families with children, pregnant woman and persons with mental health conditions. There were at least five babies at the closed facility the delegation visited. Some of the babies were born in Belarus and received their first vaccine there. The Special Rapporteur recognized their photos during his visit to the crisis room in Grodno where their

¹⁴ AL POL 3/2022.

mothers received care from the Belarusian Red Cross. Moreover, although the delegation did not visit them, according to the Polish authorities unaccompanied children were detained in closed detention facilities. The Special Rapporteur also noted with concern that new immigration detention facilities were being built in Poland, including new facilities for the detention of families and children that he observed when visiting the guarded centre for foreigners of Lesznowola.

78. Alternatives exist in Poland. There are open facilities run by the Office for Foreigners. In such centres, children can benefit from the public education system and attend school outside the facilities, with the support of local government and under the supervision of the Ministry of Education. The Special Rapporteur also learned that the Polish Border Guard cooperates with charity groups to provide alternative accommodation for persons with disabilities or other illness that require intensive care.

VII. Conclusions and recommendations

79. **The situation of migrants at the Polish-Belarusian border reflects the ongoing geopolitical crisis in the region. The Special Rapporteur firmly condemns the use of migrants as a political tool, which is a violation of their human rights. Migrants should not be used or sacrificed.**

80. **Pushback practices at the border have cost migrants' lives. Continued reports of migrants stranded at the Polish-Belarusian border, especially new arrivals, confirm that harsh border governance measures and the construction of the physical fence have not deterred irregular border crossing attempts but have heightened the risks to migrants and increased their suffering. Serious concerns remain over the physical and mental integrity of all migrants stranded at the Polish-Belarusian border, particularly in view of incoming arrivals and the increasingly harsh circumstances after the installation of the fence, including during winter weather. These conditions may also amount to cruel, inhuman or degrading treatment and may result in violations of the rights to life and security of person.**

81. **The Special Rapporteur calls upon Poland, Belarus and the European Union to conduct constructive dialogue, most importantly to prevent further loss of life and to ensure that the protection of the human rights of migrants is placed at the centre of any solution adopted to address this situation, and recommends that:**

(a) **Poland and Belarus take all reasonable precautionary steps to protect life and to prevent excessive use of force and conditions amounting to cruel, inhuman and degrading treatment and cooperate to save lives and prevent migrant deaths and injuries, in accordance with international law;**

(b) **Since each death requires a prompt, independent, transparent and thorough investigation, the authorities of Poland and Belarus must cooperate with such processes, conduct prompt, thorough and transparent investigations into each migrant death and each allegation of violence committed by border guards on both sides at the Polish-Belarusian border and take proactive steps to remove suspected perpetrators from duty and prosecute them, when appropriate;**

(c) **Relevant United Nations entities provide human rights training to border guards and other law enforcement officials, as well as to judges and legal aid providers in both Poland and Belarus;**

(d) **Poland and Belarus ensure access to justice and remedies for migrants who have suffered human rights violations or abuses as a result of border governance measures, including by establishing accessible and adequate complaint and reparation procedures and by refraining from raising territorial or other restrictions that effectively prevent applicants from accessing justice;**

(e) **Poland and Belarus grant full access to the border area to civil society organizations and independent monitoring mechanisms; it is important to ensure that a strong and independent role is played by local civil society in both countries, as well**

as to allow international organizations to conduct in situ monitoring: as emphasized by the Special Rapporteur, States must not impose any penalty or restriction on life-saving humanitarian assistance provided by civil society organizations.

82. The Special Rapporteur is deeply concerned about the legislative framework adopted by Poland allowing the practice of pushbacks, in violation of international human rights and refugee law. He recalls that, in the absence of an individualized assessment of each migrant concerned and other procedural safeguards, pushback practices always result in human rights violations incompatible with the prohibition of collective expulsion and refoulement. Domestic legislation, including legislation aimed at legalizing pushbacks, does not absolve States of their obligations under international law.

83. In particular, the Special Rapporteur is also concerned that the new legislation adopted by Poland allows authorities to disregard applications for asylum if the applicant has been stopped immediately after having crossed the border outside an official border crossing. Under international human rights law, everyone has the right to seek asylum and the denial of access to territory without safeguards cannot be justified on the grounds of any exceptional operational challenge, such as the size of migratory movements.

84. The Special Rapporteur urges Poland to review its legislation and to put an end to pushback practices, to respect fully the prohibition of collective expulsion, to uphold the principle of non-refoulement and to ensure access to asylum procedures and individual assessment of the protection needs of migrants, without discrimination, regardless of their status and country of origin.

85. Regarding the deprivation of liberty of migrants in Poland, migrants and asylum-seekers continue to be routinely placed in closed detention facilities, including migrants belonging to the most vulnerable groups, such as children, pregnant women, and persons with mental health conditions. The Special Rapporteur observed the detrimental impact that the prolonged detention and lack of information about their situation had on the mental health of those detained. Detention for immigration-related 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. Children and their families, on the other hand, should never be detained: the detention of any child for reasons related to their, their parents' or their legal guardians' immigration status never responds to the best interests of the child and always constitutes a violation of the rights of the child. With the above concerns in mind, the Special Rapporteur:

(a) Urges the immediate release from detention of all unaccompanied children, children with their families, pregnant women and persons with mental health conditions to adequate care and reception facilities which are open and non-custodial;

(b) Encourages relevant authorities to expand the use of alternatives to detention of migrants; projects to build new closed facilities for the detention of migrants should be halted immediately, particularly those facilities planned for the detention of families and children, instead, Poland should redirect those resources to invest in alternative reception and care centres for children, including family inclusive centres;

(c) Urges the Polish Border Guard, currently responsible for almost all aspects of the operation of closed detention facilities for migrants, to consider mitigating some of its activities and to engage with specialized and independent local and international organizations that have rich experience and expertise in providing legal and social assistance to migrants.

86. In relation to the situation at the border with Ukraine, the Special Rapporteur praises the efforts and timely action of the Government of Poland and Polish society in admitting, assisting and integrating Ukrainian refugees since the outbreak of the war. Tribute should be paid to Polish citizens for opening their doors to and sharing their resources and space with their guests. Because of the kindness, generosity and solidarity

of ordinary Polish people with Ukrainian refugees, there is no refugee camp in the country.

87. Despite the strong commitment demonstrated by the Polish Government to provide shelter to all Ukrainian refugees, the Special Rapporteur is concerned about the sustainability of the current housing model, which is heavily dependent on the generosity of individuals and private donors. It remains challenging for the most vulnerable to find proper shelter, including those with physical or mental disabilities, older persons, single mothers with multiple children, persons belonging to ethnic minority groups and third-country nationals.

88. While Ukrainian refugees are generally well-supported, the realities for migrants, asylum-seekers and refugees from other countries of origin appears to be very different as the applicable legal framework and the consequent entitlements are not the same. Third-country nationals in need of assistance, who cannot benefit from the wide range of support and financial aids designated for Ukrainians, face discrimination and heightened difficulties in obtaining residence permits and proper shelter and must rely on assistance provided by private or international humanitarian actors. In this regard, the Special Rapporteur recommends that:

(a) The Polish Government conducts a comprehensive assessment of the housing needs of all refugees, taking into consideration the potentially high number of new arrivals as a result of developments related to the war in Ukraine, weather conditions and other factors;

(b) Realistic plans be made to ensure the concrete delivery of the clear and strong commitment made by the Polish authorities “not to leave any Ukrainian without a roof over their heads”;

(c) Assistance needed from the international community, especially the European Union be identified; in this regard, the Special Rapporteur also calls on relevant actors to provide all necessary assistance and support;

(d) Schooling capacity be taken into consideration when making accommodation plans so as to avoid pressure on the education system in big cities;

(e) Obstacles faced by refugee women to legal abortion be addressed;

(f) Measures be adopted to ensure protection and assistance of third-country nationals seeking asylum in Poland and any discriminatory practices be discouraged.
