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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland

Comments by the State*

* The present document is being issued without formal editing.



Polish comments to the Report of the Special Rapporteur on the human rights of migrants on his visit to Poland from 12 to 15 July and 21 to 25 July 2022 (version of 13 February 2023)

General comments:

It should be noted that the mechanism of instrumentalization of migration used by the Belarusian regime and supported by Russia, is insufficiently covered and understood in the Report of the Special Rapporteur on the human rights of migrants on his visit to Poland from 12 to 15 July and 21 to 25 July 2022. Since the beginning of the migration crisis on the Polish-Belarusian border in 2021, it is confirmed that illegal migration is part of a hybrid threat supported by disinformation campaign aimed at destabilizing the situation on the border with the EU and inside the EU. Migrants making attempts to cross the Polish-Belarusian border in the vast majority, despite their awareness of the dangers of illegal border crossing, use the assistance of people and institutions organizing the "Belarusian smuggling route" for a fee. Tourist agencies or smugglers help migrants obtain a Belarusian tourist visa and fly to Minsk on chartered planes, from where they reach the border with Poland. It is worth noting that according to the international refugee law, migrants using the Belarusian invitation are already in a safe country - Belarus is a party to the 1951 Convention Relating to the Status of Refugees.

The services of the Ministry of Interior and Administration are aware from the very beginning that third-country citizens, especially women and children, are instrumentally and cynically used for this purpose. We believe that people's lives must not be subjected to this kind of shameful activity. The instrumentalization of migration is a part of political blackmail against Poland, the Baltic states and Europe as a whole.

Paragraph 6:

In this paragraph the Report *inter alia* states: *Poland and Belarus share a 247 km long land border, which is also the external border of the European Union.*

Polish comments: Poland and Belarus share a 418,24 km long border, which is also the external border of the European Union. This section of the border is protected by two Border Guard Divisions – Podlaski Border Guard Division (247 km long, of which 186 km is a land border and 61 km is a river border) and Nadbużański Border Guard Division (171,24 km long only river border).

Paragraph 8:

We suggest the following reformulation of one sentence of this paragraph: *Measures adopted follow a security-oriented approach and include the adoption – at that time - 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.*

In this paragraph the Report *inter alia* states: *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.*

Polish comments: The measures adopted by Poland were not intended to worsen the situation of migrants, but served to secure the EU's external border, for which Poland is responsible. We do not agree with this statement, because the steps taken by the Border Guard officers took into account the individual situation of migrants and were not in conflict with human rights.

Paragraph 9:

In this paragraph the Report *inter alia* states: *Pushbacks have become a routine element of national border governance in both Belarus and Poland, with serious negative impact on the well-being and human rights of migrants.*

Polish comments: The situation on the Polish-Belarusian border is an element of a hybrid war caused by the Belarusian regime and inspired by Russia. Border Guard officers are tasked with protecting the borders of Poland, which is also the external border of the EU. Migrants are instrumentally used by the Belarusian regime and forced to cross the EU's external eastern border against the applicable law.

Belarus remains a party to the Geneva Convention and remains the first safe country in its meaning. According to Poland, the protection of human rights cannot mean that undemocratic regimes cynically using migrants to create migration pressure at the border remain unpunished, and that countries ensuring the security of their citizens are being criticized for it.

At the same time, Poland provides access to these procedures in the case of persons seeking international protection.

In this paragraph the Report *inter alia* states: *Other concerns in relation to 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 separations.*

Polish comments: It should be noted that whenever a missing or injured person is reported, the state services initiate search and rescue operations.

In the winter period (November-December 2021), permanent medical aid points organized by the Polish Red Cross were established close to the border, staffed by paramedics and doctors, as well as representatives of CARITAS Polska. Border Guard officers, whenever necessary, provide the necessary medical assistance, including transporting people to medical facilities.

In this paragraph the Report *inter alia* states: *Those who were not returned to the border line have been placed in guarded detention centres throughout the country, under the authority of the Border Guard, where they have been detained for long periods of time, facing obstacles in accessing legal assistance, and adequate medical and psychological support.*

Polish comments: This sentence formulates opinion of the Special Rapporteur, so it should not be included in the section titled: *General Background Information*.

Paragraph 10:

We suggest the following reformulation of this paragraph:

Tensions at the Polish-Belarusian border temporarily de-escalated during the winter of 2021, with reduced movements of arrivals detected between December 2021 and February 2022. While not in the high figures observed before, reports of third country nationals attempting to cross the border to Poland continued throughout the year 2022 and up to the moment of drafting the present report, with individuals arriving to the Russian Federation or previously residing there and transiting through Belarus, still mainly originating from Syria, Afghanistan, Iraq, but also from African, Latin American and South Asian countries.

Polish comments: Additionally, it is worth noting that in 2022, those migrants were mainly young men from various third countries, often staying in Russia or Belarus legally for a long time, e.g. due to studies, work, etc.

Paragraph 11:**We suggest the following reformulation of this paragraph (new wording):**

On February 24, 2022, the Russian Federation attacked Ukraine. When Russia attacked, terrified people started to flee towards the Ukrainian-Polish border. The Polish government opened the border and everyone who wanted to cross it was given such an opportunity. At that time, the priority of the Polish government was to provide them with security, care, accommodation and food. The total number of people who entered Poland from Ukraine from February 24 to 28 was 354,912, in March 2,056,844. After quickly organizing first aid for all those fleeing, the next action of the Polish Government was to create a whole system that would enable refugees to live normally in Poland and gradual approach to independence. For this purpose, already in March 2022, the law on assistance for Ukrainian citizens was adopted, which gave them rights analogous to those of Polish citizens. These regulations enabled refugees to stay legally in Poland, benefit from health and social services, as well as access to education and the labour market.

Paragraph 14:**We suggest the following reformulation of this paragraph:**

*Poland is one of the five countries that voted against endorsement of the Global Compact for Safe, Orderly and Regular Migration (A/73/PV.60) **and did not support the Global Compact on Refugees (A/RES/73/151 – Poland did not participate in the voting).***

Paragraph 19 b:**We suggest the following reformulation of one sentence in this paragraph:**

*Act of 12 December 2013 on Foreigners sets out principles and conditions governing entry, transit, residence and departure from the territory of Poland; Act of 13 June 2003 on Granting protection to foreigners within the territory of the Republic of Poland regulates the granting all forms of international protections, **including temporary protection** and provides for social assistance for the beneficiaries;*

Paragraph 19 c:

We suggest the following reformulation of this sentence: *The new provisions entered into force on **12 March** and apply retroactively from 24 February 2022.*

Polish comments: The Act of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with Russia's ongoing invasion of Ukraine went into force on 12 March 2022.

Paragraph 20:

In this paragraph the Report *inter alia* states: *Separately, new provisions were introduced to the Regulation of the Ministry of Interior and Administration of 13 March 2020 on temporary suspension or restriction of border traffic at certain border crossing points.*

Polish comments: It should be noted that the regulation of the Ministry of Interior and Administration of March 13, 2020 was adopted in connection with the SARS-CoV-2 pandemic in order to prevent the spread of the virus. Also, the changes to these provisions concerned issues related to the situation of the pandemic, and not the instrumentalization of migration.

In this paragraph the Report *inter alia* states: *These changes have enabled Polish Border Guards to immediately return to the borderline those migrants who are apprehended while attempting to cross into Poland outside official crossing points.*

Polish comments: On October 26, 2021, the Act amending the Act on foreigners and certain other acts entered into force, which introduced the possibility of issuing a decision to leave the territory of the Republic of Poland in the case of a foreigner detained immediately after crossing the EU external border, and, on this basis, bring the foreigner to the border.

The provisions are primarily intended to ensure that foreigners arriving on the territory of the Republic of Poland in order to seek protection against persecution have access to appropriate procedures for granting international protection, the standards of which are set out in Directive 2013/32/EU. Access to safe and effective refugee procedures must be ensured for persons seeking international protection.

The introduced changes were aimed at ensuring the efficiency and effectiveness of proceedings for crossing the border against the law and have absolutely no impact on persons seeking international protection.

The statutory solutions introduced in connection with the specific migration situation are not in conflict with the principle of non-refoulement. Every foreigner seeking protection has the right to declare his willingness to submit an application for international protection at any time. In such a situation, the Border Guard officers do not bring the person to the state border line, but, in accordance with Art. 24 and Art. 30 sec. 1 of the Act on granting protection to foreigners in the territory of the Republic of Poland, they accept an application for international protection from a foreigner, carry out the necessary activities related to the registration of the application and providing the applicant with all information, and then forward the application to the competent authority, i.e. to the Head of the Office for Foreigners.

Paragraph 21:

In this paragraph the Report *inter alia* states: *New provisions in the Ministerial Regulation explicitly allow for the removal of any person who had crossed the border outside official procedures, and for the return to the state border line of persons found in border crossing points where border traffic has been suspended.*

Polish comments: Pursuant to the regulation, persons crossing the border of the Republic of Poland on the basis of a visa issued for the purpose of arrival for humanitarian reasons are allowed to undergo border control. In addition, in particularly justified cases, the commander of the Border Guard post may allow foreigners to enter the territory of the Republic of Poland - including in the case of persons seeking international protection.

In this paragraph the Report *inter alia* states: *It did not provide for any exceptions for persons seeking international protection, thereby significantly limiting the possibility of applying for international protection by foreigners entering Poland's territory in an irregular manner.*

Polish comments: These legal solutions have not cancelled provisions on the right to seek for international protection on the territory of Poland, even if without permission to stay. So the opinion that the amendments significantly limited the right to apply for asylum is not correct. The Polish authorities provided the statistics regarding asylum applications submitted after crossing the Polish-Belarusian border.

Paragraph 22:

In this paragraph the Report *inter alia* states *Although such removal orders may be appealed to the Commander in Chief of the Border Guard, 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 set period of between six months and three years, regardless of their protection needs.*

Polish comments: On October 26, 2021, the Act amending the Act on foreigners and certain other acts entered into force, which introduced the possibility of issuing a decision to leave the territory of the Republic of Poland in the case of a foreigner detained immediately after crossing the EU external border, and, on this basis, bring him to the border line border.

What is important, these solutions are not in conflict with the principle of non-refoulement, because every foreigner has the right to declare at any time his willingness to submit an application for international protection. Applications are accepted from anyone who declares such a will. However, due to the large number of people declaring and certain possibilities of providing translation, applications are often accepted not strictly at the Border Guard post

on the Polish-Belarusian border, but at the next stage - in the conditions of a guarded centre for foreigners.

Additionally, since the provisions of Act on granting protection to foreigners on the territory of Poland still apply, it should be stated “in the opinion of the Special Rapporteur – regardless of their protection needs.”

Paragraph 26:

We suggest the following reformulation of one sentence in this paragraph:

Whether to place an individual in open or guarded facilities during the asylum procedure is largely at the assessment of the Border Guard, although the Office for Foreigners has the power to release individuals from closed to open facilities.

Paragraph 27:

We suggest to delete the following sentence in this paragraph:

They only receive the applications from the Border Guard.

Paragraph 31:

We suggest the following reformulation of this paragraph:

*As of February 23, 2023, over 9.4 million of refugees fleeing the war in Ukraine have crossed the Ukrainian – Polish border to Poland seeking protection. The majority of them are women and children. Approximately currently about 1.3 million are staying in Poland, and over 1.43 million Ukrainian citizens have applied for PESEL number, an identification number for people residing in Poland that is required to access rights provided under the temporary protection. Under the Act on Assistance for Ukrainian nationals in connection with Russia’s ongoing invasion of Ukraine, Ukrainian nationals and their spouses fleeing the war enjoy legal 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 PLN 10 billion (approximately 2 billion euro) earmarked funds to provide assistance to Ukrainian citizens. Ukrainian refugees are entitled to a one-off cash assistance of PLN 300 (approximately 63 euro) per person intended for maintenance, in particular to cover expenses for food, clothing, footwear, personal hygiene products and housing fees. As of 20 February 1 222 685 individuals have benefited from this allowance. Ukrainians are also entitled to other social support and benefits, monetary and non-monetary benefits from social assistance system, including food and periodic allowance, etc. Ukrainian citizens also receive support for families and children: these include monthly allowance for children (**among others 500+ benefit ie. monthly allowance of 500 PLN (aprox. 105 euro) per child**), and access to funding to reduce the fee for institutional childcare and other family care programs run by the Government. The provisions of this special law on assistance for Ukrainian nationals obviously 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 EU Temporary Protection Directive. Although refugees fleeing the same war are generally all 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 permanent residence permit holders and particularly those in irregular situations, such as undocumented migrants and those who were waiting for a final decision on their applications for international protection in Ukraine.*

Polish comments: PESEL number is the Polish citizens’ identification number. There was no special Ukrainian PESEL number. Ukrainians were granted PESEL number, not UKR PESEL number.

Paragraph 32:

We suggest the following extension of this paragraph:

In the weeks before the outbreak of the war, Poland became prepared to receive and host refugees from Ukraine. Even before the outbreak of the war in Ukraine, the Polish government developed ready-made scenarios taking into account a large group of possible refugees from Ukraine. Prime Minister Mateusz Morawiecki by Order No. 37 of February 18, 2022 on the International Team for the reception by the Republic of Poland of persons arriving from the territory of Ukraine and Ordinance No. 36 of February 18, 2022 on the Inter-ministerial Team for developing a program for the reception by the Republic of Poland of injured and injured people coming from the territory of Ukraine, appointed special inter-ministerial teams. The tasks of the team include the implementation of activities necessary to prepare the Republic of Poland to accept people coming from the territory of Ukraine, ongoing assessment of the level of influx of refugees from the territory of Ukraine and its impact on internal security and public order on the territory of the Republic of Poland, monitoring the state of preparation of the government and local government administration to accept refugees arriving on the territory of the Republic of Poland, presenting proposals for solutions in the field of organizing the transport and relocation of refugees.

Paragraph 32:**We suggest to delete the following sentence in this paragraph:**

At the peak of arrivals, in March more than 140,00 women and children sought refugee daily.

Paragraph 35:**We suggest the following reformulation of this paragraph:**

At the provincial level, Governors set up temporary collective accommodation points providing food, accommodation, medical and psychological care, and information to those in need of catering and shelter. As of February 15, 2023, 495,434 people have benefited from organized accommodation in all voivodships since the beginning of the activities, i.e. from February 2022. At the national level, a cash benefit of PLN 40 (approximately 8.5 Euro) 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 of 15 August 2022, over 1.2 million Ukrainian citizens have been covered. Since 1 July 2022, this government subsidy is limited to new arrivals, for 120 days, and existing beneficiaries with vulnerabilities; in the meantime, many individual hosts have been sacrificing their private space for months. Following new amendments introduced to the Special Act in January 2023, Ukrainian refugees, with some exceptions, will be obliged to pay for accommodation in collective shelters after the initial 120 days period. For each entity, in particular a natural person running a household, who will provide accommodation and meals at their own expense to a Ukrainian citizen for a period not longer than 120 days from the date of arrival on the territory of the Republic of Poland, a cash benefit of PLN 40 per day is paid. The benefit is paid from the Assistance Fund. The commune may extend the period of payment of the benefit for a period longer than 120 days in the case of providing accommodation and meals to a citizen of Ukraine who, due to special personal conditions, e.g. disability, old age, single parenting of at least 3 children, pregnancy, unable to become independent. The number of Ukrainian citizens covered by positively considered applications as of January 31, 2023 amounted to 1,603,574.

Paragraph 39:**We suggest the following reformulation of this paragraph:**

Under the Law of 1993 on Family Planning, Protection of Human Foetus, and the Conditions of Legal Pregnancy Termination, abortion is illegal except in two circumstances: when the pregnancy endangers the life or health of the women; and when the pregnancy results from a crime, such as rape. Besides the restrictive legal framework, the Special Rapporteur was also concerned that practical and other obstacles prevent refugee women from accessing to

safe and legal abortion. These obstacles include stigma associated with abortion, conscience-based refusal by doctors, ineffective procedures, and difficulties in obtaining a formal authorization from a prosecutor, which is a requirement to access legal abortion procedures under the third 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 the limitations in law and in practice.

Polish comments: Information presented in this paragraph does not reflect regulations binding during the Special Rapporteur's official visit to Poland. The visit was conducted from 12 to 15 July and 21 to 25 July 2022. At that time and also currently according to the Law of 1993 on Family Planning, Protection of Human Foetus, and the Conditions of Legal Pregnancy Termination, abortion is illegal except in two circumstances: when the pregnancy endangers the life or health of the women and when the pregnancy results from a crime, such as rape.

Pregnancy termination in case when there is a high probability of a severe and irreversible fatal impairment of the foetus, at the time of the visit was already illegal, as the provisions of the above-mentioned Act changed in January 2021.

Therefore we propose the following wording of para 39 of the report.

Paragraph 41:

In this paragraph the Report *inter alia* states: *To facilitate effective integration of Ukrainian refugees into the Polish labour market, the Government recognises university diplomas obtained in Ukraine as equivalent to a corresponding Polish diploma.*

We would like to provide with the further clarification on this: In the Act of March 12, 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state, the recognition of professional qualifications of Ukrainian citizens is governed by the provisions of Art. 23b concerning regulated mining professions.

In Art. 46-49 of this Act provide for facilitating access to employment at universities, research units and other units of the Polish Academy of Sciences, research institutes, the Łukasiewicz Center and institutes operating as part of the Łukasiewicz Research Network, including i.a. taking into account the relevant Ukrainian qualifications for the position.

Recognition of qualifications of Ukrainian citizens also applies to the provisions regulating the performance of certain professions, including medical professions.

Paragraph 45:

We suggest the following reformulation of the first sentence in this paragraph:

In March 2022, the Ministry of Justice and the Ministry of Family and Social Policy, *in cooperation with Border Guard Headquarters*, developed a "Procedure for dealing with unaccompanied minors when crossing the border" *dedicated to the rules of procedures concerning unaccompanied minors travelling in organized groups (from orphanages) and travelling alone.*

In this paragraph the Report *inter alia* states: *These concerns are incomprehensible, since the legal institution of a temporary guardian has been constructed for Ukrainian minors and placed in the Act of 12 March 2022.*

Polish comments: These concerns are incomprehensible, since the legal institution of a temporary guardian has been constructed for Ukrainian minors and placed in the Act of 12 March 2022.

The Act on supporting the family and the system of foster care guarantees that all minor foreigners who require it are covered with foster care, regardless of their status or country of origin. In addition, a very short time after the outbreak of the war, the law on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this country was passed, which introduced additional broad legal instruments ensuring the protection of minors from this country.

Paragraph 50:

In this paragraph the Report *inter alia* states: *Due to the two-folded approach in applicable legislation and policies and the fact that the large majority of Governmental programs in response to the war in Ukraine are designed to assist Ukrainian refugees, third country nationals, especially those already in irregular situations in Ukraine, and those with certain nationalities, such as Russians and Belarusians cannot benefit from the wide range of support and financial aids designated to Ukrainians.*

Polish comments:

Belarusians are not discriminated against, they are entitled to a wide range means of financial and non-financial support if meet certain formal conditions.

In this paragraph the Report *inter alia* states: *Those third country nationals in need of assistance face discrimination in accessing services and benefits described above, and have to rely on assistance provided by private or international humanitarian actors.*

Polish comments: Where do these conclusions come from? Persons who are in need of assistance have the right to be registered by the Office for Foreigners as beneficent of temporary protection (Art. 106-118a, Act on granting protection to foreigners on the territory of Poland).

Paragraph 51:

We suggest the following extension of the first sentence in this paragraph: *Cooperation between Poland and Belarus in managing their common border changed drastically after the presidential elections in August 2020 in Belarus and the post-election violent repression of peaceful protests by Belarusian authorities and the deterioration of human rights, democracy and rule of law in the country. Polish consular posts in Belarus and Ukraine immediately began issuing humanitarian visas to citizens of Belarus, especially to oppositionists and repressed persons, as well as to their family members. Even with limitations resulting from pandemic regime, the Polish Border Guard allowed entry to all citizens of Belarus with such visas (then, on August 26, 2020, enshrined in the law). Moreover, in case of Belarusian citizens who reported themselves at the border and did not have documents entitling them to enter and stay on the territory of Poland and seeking for international protection, or implicitly expressing fear of returning to territory of Belarus, the entry was allowed.*

In this paragraph the Report *inter alia* states: As a result, border management relations between Poland and Belarus have significantly deteriorated since 2020, with tensions at the shared border escalating after August 2021.

Polish comments: If we want to keep this part of the text understandable, the above added supplement should be included.

Paragraph 52:

We suggest the following reformulation of this paragraph:

In the summer of 2021, there was a significant increase of visitors with Belarusian tourist visa arriving in Minsk from middle east countries, mainly families with children. Most of them were from Iraq and Syria, and many came in groups, benefiting from “group visas” issued by Belarus.

Polish comments: The migration practice on the Polish-Belarusian border is an element of the hybrid war waged by the Belarusian regime. Foreigners, encouraged by Belarus with the vision of easy illegal migration to the EU, voluntarily legally go to Belarus, from where, with the coordinated assistance of Belarusian services, they attempt to illegally cross the border with Poland.

Paragraph 53:

In this paragraph the Report *inter alia* states: *Tensions at the Polish-Belarusian border initially manifested in August 2021, when a first group of around 32 Afghani migrants*

reached the normally restricted border area between Poland and Belarus near the town of Usnary Gorny, requesting international protection from the Polish side. The group comprised 4 women, 27 men and one girl.

Polish comments: It should be noted that it was not possible to take any action directly against the migrants staying in the camp, because the migrant camp was located outside the Polish-Belarusian border, on the territory of Belarus. This fact also made it impossible to undertake verification measures against those persons in order to confirm and compare the identity of the persons staying there with those applicants before the Court.

Nevertheless, it should be recalled that from the very beginning the Polish side made every effort to deal with the humanitarian crisis at the border. Already on August 22, 2021, the Government of the Republic of Poland decided to provide humanitarian aid to Belarus, addressed to migrants in the indicated camp. On that day, a diplomatic note was sent on this matter. The convoy with humanitarian aid was prepared and set off towards the border crossing in Bobrowniki on August 23, 2021. However, the Belarusian side did not allow the convoy to enter.

Importantly, the position presented by the Polish side regarding the location of the camp, and thus the jurisdiction exercised over it, is confirmed by the actions of the Belarusian services - starting from the very fact of bringing the migrants to the site of the camp established later, through providing the migrants with food, clothes and the most necessary equipment (tents, sleeping bags), supervising them, to the very fact of taking the migrants out of the camp and moving them to another unknown place.

Additionally the composition of the above mentioned group of migrants was changing, some persons left, some new persons were added to the group. The number of 32 persons appeared in the list composed by the representative to ECHR, however it included 2 women, 29 men and one girl.

We suggest also the following reformulation of one sentence of this paragraph:

Their requests for protection were ignored, since the Polish authorities were of the opinion that the migrants stayed on the territory of Belarus, and they were not allowed to enter the Polish territory or return to Belarus.

In this paragraph the Report inter alia states: *They 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.*

Polish comments: Access to food, water etc. was provided by the Belarusian side.

Paragraph 54:

In this paragraph the Report inter alia states: *Since then, migrants, including families with children, have attempted to enter Poland through its border with Belarus on a regular basis.*

Polish comments: In the border area, there were many attempts to cross the border by force, coordinated and supported by officers of the Belarusian services. There were also provocations by Belarusians, directed at officers of the Border Guard and soldiers of the Polish Armed Forces. Staying on the Polish-Belarusian border, in the immediate vicinity of the border line, could pose a real threat to the safety of outsiders. The provocations in question included incidents of Belarusian officers aiming weapons at persons on the Polish side, fake firing, shooting most likely with blank ammunition, and the use of pyrotechnics.

Paragraph 56:

In this paragraph the Report inter alia states: *New provisions authorised the Minister of 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.*

Polish comments: The introduced restrictions were also aimed at the protection and safety of bystanders due to the behaviour of the Belarusian services (e.g. incidents of aiming

weapons by Belarusian officers at people on the Polish side, fake shots, shooting most likely with the use of blank ammunition).

Paragraph 57:

In this paragraph the Report inter alia states: *Since early December 2021, selected 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 Border Guard cars along pre-determined routes.*

Polish comments: Not selected, all media outlets could request access to the border zone.

Paragraph 62:

In this paragraph the Report inter alia states: *For those migrants that require medical attention, the assistance is given at the foreigners' registration centre.*

Polish comments: If their health requires it, migrants are also provided with help in hospitals.

Paragraph 63:

In this paragraph the Report inter alia states: *Border guards have in some instances been involved in the arrangement and delivery of humanitarian assistance to migrants in need, however, the Special Rapporteur notes with concern that the ultimate goal of the Polish Border Guard seemed to be pushing them back again to the other side of the border once they have regained some physical strength.*

Polish comments: Polish services were often involved in search and rescue operations.

Paragraph 64:

We also suggest the following reformulation of one sentence in this paragraph: 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 them from the territory of Poland.

Paragraph 65:

In this paragraph the Report inter alia states: *The Special Rapporteur is particularly concerned about allegations of use of violence by the Border Guard of both Poland and Belarus pushing migrants back and forth.*

Polish comments: Polish services do not use violence against migrants. We do not know where such accusations come from. We are aware about the use of violence by the Belarusian side or the migrants themselves, which we informed international institutions about.

In this paragraph the Report inter alia states: *Migrants of African descent are among the most affected, as well as those who are perceived as Muslims.*

Polish comments: Since this is an opinion of the Rapporteur, it should be “seem to be”, not “are”. On the basis of what data was this thesis made?

Paragraph 69:

We also suggest the following reformulation of one sentence in this paragraph: *Several migrants have lost their lives in the border area, on the both sides, since 2021. At the time of the visit, the Belarusian authorities had documented 4 of such cases and collected data, while the Polish authorities had investigated 10 deaths.*

Paragraph 71:

In this paragraph the Report inter alia states: *September 2021 have severely hindered access by civil society, media and humanitarian actors.*

Polish comments: Pursuant to the Regulation of the President of the Republic of Poland of 2 September 2021 on the introduction of a state of emergency in part of the Podlaskie Voivodship and part of the Lubelskie Voivodeship 13, a state of emergency was introduced in the border area with Belarus¹⁴. On December 1, 2021¹⁵, a temporary ban on staying in a specific area in the border zone adjacent to the state border with the Republic of Belarus was announced for the period from December 1, 2021 to March 1, 2022¹⁶.

The introduced restrictions were aimed at ensuring the safety of Polish citizens in the context of hostile behaviour on the part of the Belarusian services at the border. At the same time, the regulation on the temporary prohibition of staying in a specific area in the border zone adjacent to the state border with the Republic of Belarus made it possible to apply for the consent of the Border Guard Commander to enter the Zone.

We also suggest the following reformulation of one sentence in this paragraph: Furthermore, human rights defenders and civil society actors, as well as local residents providing help to migrants at the Polish-Belarusian border, have also complained about being the target of harassment and intimidation by members of the law enforcement officials, including in areas located outside restricted areas.

Paragraph 72:

In this paragraph the Report *inter alia* states: *However, as different procedures may overlap, the period of detention could extend up to 18 months in practice.*

Polish comments: This opinion is absolutely not real and should be removed, since such cases have never happen. The law provisions are constructed in this way, that if there are no grounds for further detention (there are no perspectives for return, or there are health obstacles) or there is highly possible that the person will be granted international protection, the person is released. The average length of stay in detention in 2022 was (depending on the detention centre) from 90 to 130 days.

Paragraph 73:

We suggest the following extension of the last sentence of this paragraph:

Both acts allow families with children and unaccompanied children to be placed in guarded centres (unaccompanied minors only under certain conditions in return procedure and only over 15 years old).

Paragraph 75:

In this paragraph the Report *inter alia* states: *However, the lack of access to independent legal counselling, insufficient mental health care, limited outdoor time and lack of efficient communication tools in some cases, among others, remain issues of concern.*

Polish comments: Free legal aid is provided to asylum seekers. In case of migrants in return procedure, they have the possibility to have contact to NGOs having in their statute legal aid for migrants.

Additionally: In case of mass influx it could happen that the number of psychologists were insufficient, however after this crisis the situation seems to be normalized. The detainees have access to psychologists from the detention centre and from outside. As for the limited outdoor time indicated by the Special Rapporteur it should be noted that in all detention centres the outdoor time is limited only by meal hours. Besides the meals, the free movement within detention, including outdoor areas, applies.

Paragraph 76:

In this paragraph the Report *inter alia* states: *As observed by the delegation, most migrants did not know for how long they would remain in detention.*

Polish comments: Every migrant is precisely informed about his or her procedures. Every migrant receives all information pieces in written. That fact that the migrant received an

administrative decision or a court order or information leaflet on relevant procedures it is also confirmed in service notices.

Paragraph 77:

In this paragraph the Report *inter alia* states: *Despite the possibility provided by the Polish law for the Border Guards to apply alternatives to detention, and that the Office for Foreigners has the power to release asylum applicants from detention and they are doing so in several cases, still, the Special Rapporteur witnessed many migrants in the most vulnerable situations remain detained in closed facilities, including families with children, pregnant woman, and persons with mental health conditions.*

Polish comments: If a mental illness or other disease is diagnosed or posttraumatic symptoms are discovered, the person is released. However, the diagnosis in some cases lasts several weeks.

In this paragraph the Report *inter alia* states: *Although the delegation did not visit them, according to the Polish authorities, there were unaccompanied children detained in closed detention facilities.*

Polish comments: The detention of unaccompanied minors is allowed, however only of minors over 15 years old in return procedure and only under certain conditions. Unaccompanied minors declaring the wish to seek asylum cannot be detained.

In this paragraph the Report *inter alia* states: *The Special Rapporteur also noted with concern that new immigration detention facilities are currently being built in Poland, including new facilities for the detention of families and children.*

Polish comments: No new detention centres are being built currently. There are still six detention centres (some of them with extended capacity), of which nowadays only two can receive families with children.

Paragraph 80:

In this paragraph the Report *inter alia* states: *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 heightened the risk and increased the suffering of migrants.*

Polish comments: The construction of the border wall has not completely stopped attempts to cross the border illegally, but it has contributed to reducing the intensity of attempts and acts as a deterrent to potential illegal migrants.

We suggest the following extension of the last sentence of this paragraph:

These conditions may also amount to cruel, inhuman or degrading treatment and may result in violations of the rights to life and personal integrity, however the main governmental goal is to protect the border and to discourage migrants to try to cross the border illegally.

Paragraph 82:

In this paragraph the Report *inter alia* states: *The Special Rapporteur is deeply concerned about the legislative framework adopted by Poland that allows the practice of pushbacks, in violation of international human rights and refugee law.*

Polish comment: The adopted solutions are not in conflict with international law – applications of persons seeking international protection are carried out in accordance with the procedures.

Paragraph 83:

In this paragraph the Report *inter alia* states: *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 of an official border crossing.*

Polish comment: The applications for asylum are accepted in Poland regardless of where they are submitted.

Paragraph 84:

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

Polish comment: Poland does not apply collective expulsion of foreigners. The steps taken are aimed at protecting the country's borders.
