End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022)

28 July 2022

At the invitation of the Government, I conducted an official visit to Poland to assess the situation of the human rights of migrants and refugees in the country from 12 to 25 July. During this period, following an invitation by the Government of Belarus, I also conducted a brief visit to Belarus in order to assess the situation of migrants at the border between the two countries. I thank Poland and Belarus for their openness and cooperation prior to and during the visit.

In Poland, I was granted access to all the facilities as requested and had the opportunity to meet with all relevant authorities. However, I unfortunately did not have the opportunity to meet with judges from district courts.

In Warsaw, I had meetings with representatives from the Ministry of Foreign Affairs; the Ministry of Health; the Ministry of Justice; the Ministry of Interior and Administration, including representatives of the Polish Border Guard, as well as representatives from the Office of Foreigners; the Ministry of Education and Science; and the Ministry of Family and Social Policy. I also met with legislative representatives from both the Sejm and the Senate of the Republic of Poland, as well as the National Commissioner for Human Rights and civil society organizations.

Outside Warsaw, I exchanged views with local and regional authorities: the Mayor of Biała Podlaska, the Governor of the Podlaskie Voivodeship, the Governor of the Podkarpackie Voivodeship, and the Deputy Mayor of Przemyśl.

In addition to meetings with relevant interlocutors, I conducted visits to facilities for migrants. These included the guarded detention facilities for foreigners in Lesznowola, Biała Podlaska and Białystok, the open reception facility in Biała Podlaska. During these visits, I met and spoke in private with migrant women, men, girls and boys. In this regard, I extend my gratitude to every migrant who has shared his or her personal testimonies with me.

I also visited the Połowce border crossing point and its Foreigners Registration Center and adjacent border area and the fence that has been erected by Poland across its border with Belarus, in the former restricted area. In the south, I visited the Medyka-Szeginie border crossing post at the border with Ukraine. In Rzeszów and Przemyśl, I visited medical and reception centres for refugees run by private actors, and I met with local and international civil society organizations which provide support and assistance to migrants and refugees.

In Belarus, I had meetings with representatives from the Grodno Regional Executive Committee. I also visited the Bruzgi border crossing point and its adjacent border area, including the zone where the largest group of migrants installed a makeshift camp in Autumn of 2021 and the surroundings of the former temporary logistical center in which migrants were sheltered between November 2021 and March 2022. In Minsk, I met with representatives of the Ministry of Interior, Ministry of Health, Ministry of Labour and Social Protection, the Investigation Committee and the State Border Committee. I also had the opportunity to meet with representatives of the Belarusian Red Cross, both in Grodno and Minsk, and I conducted private interviews with a few refugees.

While I appreciate the opportunity to meet with different agencies of the Government of Belarus, I regret that I was not able to meet in Belarus with any migrants who have attempted to cross the border with Poland.

I had the opportunity to exchange views with representatives from a few local civil society organizations which provide humanitarian assistance to migrants, but unfortunately I was not able to find any local Belarusian civil society organization working on monitoring and reporting on the human rights situation of migrants. This seems to reflect a larger worrisome issue of lack of civic space and criticism of governmental policies in the country.

**Refugees fleeing Ukraine**

Following Russian’s invasion of Ukraine on 24 February 2022, millions of refugees have crossed the Polish-Ukrainian border to Poland seeking protection. In March 2022, the Polish parliament passed an Act on Assistance for Ukrainian nationals in connection with Russia's ongoing invasion of Ukraine. Under this law, Ukrainian nationals and their spouses fleeing the war enjoy legal stay in Poland for 18 months. 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. Ukrainian refugees are entitled to a one-off cash assistance of approximately 63 euro per person. Over 950,000 individuals have benefited from this allowance. In addition to this one-off cash allowance, Ukrainians are also entitled to other social benefits, such as monthly allowance for children, family care, etc. The provisions of this special law on assistance for Ukrainian nationals do not apply to third country nationals who also fled Ukraine. 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 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. I note with concern that this double standard approach has led to feelings of being discriminated among third country nationals.

Prior to the outbreak of the war, Poland was prepared to receive and host refugees from Ukraine. However, the unprecedented high number of refugees approaching the Polish border within a very intense period of time exceeded expectation and posed significant challenges to the border guards and local authorities of Podkarpackie and Lublin Voivodeships, the two regions sharing border with Ukraine. On 6 March, the number of refugees entering to Podkarpackie voivodeship reached the peak: 75,000. Border entry capacity was maximized and procedures were simplified to facilitate speedy entry of refugees. Authorities at the voivodeship level, in close cooperation with border guards present in the region, fire department, the police and the national railway service mobilized necessary resources to receive refugees and facilitate their onward journey to other parts of Poland or neighbouring countries. Reception centres after border crossing points were established to address medical and humanitarian needs of refugees; first point contact network was also set up to provide information on transportation and accommodation; free railway and bus transportation was provided to refugees to other regions in Poland or neighbouring countries. The Polish Government, since the outbreak of the war in Ukraine, has spent over 670, 000, 000 Euro on these reception facilities established at the border to provide basic aid, meal 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. IOM set up a tent after the border crossing point providing case management support to refugees, especially third country nationals who need assistance, including legal counselling, accommodation referral, etc.

While I highly appreciate the openness of the Polish Government and society in accepting, assisting and integrating refugees, these processes also expose some pre-existing issues in the Polish system. More specifically, I am concerned 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. I have exchanged my views with relevant authorities and members of the parliament in this regard.

Under the Law of 1993 on Family Planning, Protection of Human Fetus, and the Conditions of Legal Pregnancy Termination, abortion is illegal except in three circumstances: when the pregnancy endangers the life or health of the women; when there is a high probability of a severe and irreversible fatal impairment of the fetus; and when the pregnancy results from a crime, such as rape. In October 2020 the Polish Constitutional Court declared the second exception unconstitutional and further restricted legal abortion to two exceptional circumstances. Besides the restrictive legal framework, I am 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. Understanding that the abortion law is applicable to all women in Poland, in the current context of the arm conflict in Ukraine, refugee women, particularly refugee victims of rape, may be particularly affected by the limitations in law and in practice. I urge Poland to address obstacles faced by refugee women to legal abortion.

Since February, approximately 4.5 million refugees have crossed the border to Poland. Many of them moved on to other countries in Europe. Still, over 2 million remain in Poland and the majority has been hosted as guests by individual citizens, including the Ukrainian community, at their private homes. Most of these hosts have applied for financial assistance provided by the Government, but for different reasons, some are in fact covering the expenses by themselves. Other Polish citizens, often groups of friends, take initiatives to convert houses, shopping centres or public buildings to shelters for refugees. These private shelters provide free housing solutions to the most vulnerable refugees including big families and people with very limited financial capacity. We must pay tribute to Polish citizens for opening their doors to and sharing their resources and space with their guests. Thanks to the utmost generosity and solidarity of ordinary Polish people to Ukrainian refugees, there is no refugee camp in the country.

I have learned that on the one hand, with an increased number of Ukrainians joining the labour market, more and more refugees are financially independent and able to cover housing and other expenses on their own; on the other hand, it remains challenging for the most vulnerable ones to find a proper shelter. These include those with physical or mental disabilities, older persons, single mothers with several kids and persons belonging to ethnic minority groups, including the Roma. Without any concrete plan for the future and any alternatives, some of them reside several months in reception centres designed as transit places for short stays of two days.

Since 1 July 2022, governmental financial support for hosting Ukrainian refugees is limited to new arrivals, for 120 days, and existing beneficiaries with particular vulnerabilities; in the meantime, many individual hosts have been sacrificing their private space for months. It is necessary to assess the sustainability of the current housing model, particularly with regard to the financial and social pressure on individual hosts. I encourage the Polish Government to conduct a comprehensive assessment of the housing needs of refugees in winter, taking into consideration of potential high number of new arrivals, which, according to many sources, is very likely to occur. I am impressed by the clear and strong commitment made by the Polish authorities “not to leave any Ukrainian without a roof over their heads”; realistic plans should be made to ensure a concrete delivery of the commitment. Poland should also identify assistance needed from the international community, especially the European Union. In this regard. I call on relevant actors to provide any assistance and support that is needed.

Another time sensitive issue relates to the new school year which will start in September. School-age Ukrainian children could either continue following the Ukrainian online school or attend public Polish schools. We learned that over 200,000 Ukrainian school-age children have already enrolled in Polish public schools for the next school year. However, many students and parents have not made up their mind due to uncertainties relating to the war. Many Ukrainian families still hope to return home soon. I am pleased to learn that the Ministry of Education is ready to integrate 400,000 Ukrainian students into the Polish education system. Schooling capacity should be taken into consideration when making accommodation plans to avoid pressure on the education system in big cities. During school holidays, summer camps and other activities are organised for Ukrainian children to familiarize with the community they live in and facilitate integration. For instance, in Tomaszów Lubelski, the "Krokus" Community Center, in cooperation with the City Hall, organized therapeutic workshops for Ukrainian children.

While it was not the main focus of my visit to Belarus, I nevertheless received information on measures taken by the Government of Belarus to provide protection and assistance to refugees, including those recently fled Ukraine. Until 20 June 2022, 1287 Ukrainian nationals have applied for asylum in Belarus. My delegation met with several refugees currently residing in Belarus benefiting from international protection. I am glad to know they receive assistance from the Belarusian Red Cross. A few of them arrived several years ago, they have finished their studies and found stable jobs.

**Situation at the border between Poland and Belarus**

Poland and Belarus share a 247 km long border, which is also the external border of the European Union. While Poland and Belarus had smooth and efficient cooperation in managing their common border until recent years, following the presidential elections in 2020 and the post-election events, the European Union ceased funds and suspended and/or terminated cooperation projects with Belarus. In the summer of 2021, there was a significant increase of tourists from middle-east countries, most of whom were from Iraq and Syria, and many came in groups, benefiting from “group visas” issued by Belarus.

The situation at the Polish-Belarusian border changed drastically in August 2021 when a first group of around 30 Afghani migrants reached the normally restricted border area between Poland and Belarus requesting international protection from the Polish side. Their requests for protection were ignored and they were not allowed to enter the Polish territory or return to Belarus. This was when I, as the Special Rapporteur on the human rights of migrants, started following the situation of migrants at the border between Poland and Belarus.

In early November 2021 the situation at the border escalated when approximately 2,500 migrants marched on the highway to the border area in Belarus’ Grodno region, attempting to cross to the Polish side and apply for asylum in the EU, particularly in Germany. Since then, thousands of migrants, mainly families with children, have attempted to enter Poland through its border with Belarus. Initially the majority of them originated from middle-east countries, mainly Iraq and Syria.

A surprise to the authorities as Belarus repeatedly claimed, they did not provide any convincing facts disproving that the situation of migrants at the border was to a significant extent the result of a series of deliberate actions of the Belarusian Government. We learned from the authorities that in 2021, within a short period of time, procedures to obtain tourist visa for Iraqi citizens to Belarus were significantly simplified and that, with the assistance of travel agencies, group visas for minimum 5 and in some cases for 20 or 30 persons were issued on a regular basis. In addition, I learned that the Belarusian Border Guard was fully aware of the group of about 2,500 migrants approached the border with Poland through roads very close to a main post of the Border Guard. They circulated through a series of fences in the Belarusian side, and although there is a prohibition to enter the 200-meter zone close to the Border, the group of 2,500 migrants did so without any impediment from the Border Guard. It has to be noted that, despite several requests, I got no precise information from the authorities about the length of the border fences in the territory of Belarus.

While the complexity of the above mentioned issue requires further analysis which will be provided in my forthcoming report, I am concerned about its human rights impact on these migrants.

Before sharing my concerns, I wish to acknowledge that on the Belarusian side, the Belarusian Red Cross, in close collaboration with relevant authorities, has been working on the ground from the beginning of the situation to provide humanitarian assistance to migrants at the border and later at the temporary logistical center established by the authorities at a warehouse near the Bruzgi border crossing point to shelter migrants. The Belarusian Red Cross also connected community donors, relevant authorities and other organizations including international ones to provide specific services to migrants in need of help. With their assistance, 2 persons with prosthetic legs received immediate assistance; 6 babies were born in Belarus; and the new mothers were accommodated temporarily at the “crisis room” run by the Belarusian Red Cross. They were assisted by an interpreter to communicate their needs to the personnel. Most staff and volunteers of the Belarusian Red Cross worked long shifts during a period of 135 days at the border, assisting migrants in this unprecedented situation. They learned and improved through the process of providing food, non-food-items, medical and other assistance to migrants from different cultural and religious backgrounds.

While the Temporary Logistical Center (TLC) indeed provided some protection to migrants from the cold weather where food, blankets, footwear, etc. were distributed, concerns were raised regarding the poor physical conditions of the facility: an open spaced warehouse without the necessary infrastructures to house migrants. Testimonies also reveal incidents of gender-based violence by law enforcement personnel at the TLC.

Furthermore, following the expiration of the 30-days tourist visa, most migrants sheltered at the TLC were not allowed to leave the facility unless towards the direction of Poland. Exceptions were given to those who either agreed to return to their countries of origin or had been accepted for family reunification in a third country, or applied for asylum in Belarus, which did not seem to be an appealing option. Between January and June 2022, only 79 non-Ukrainians applied for international protection in the whole country.

I am particularly concerned that migrants, including women, pregnant women, and children were in *de facto* detention at the TLC ranging from weeks to several months. Many of them had no home to return to and no money left.

There were over 400 children at the facility in the winter of 2021. UNICEF took the initiative to provide educational activities for migrant children confined at the TLC, in cooperation with the Belarusian Red Cross and with the assistance of volunteers and local teachers.

A few other UN entities had the opportunity to conduct visits to the TLC. However, their involvement was limited to specific projects or procedures that concern migrants and asylum seekers. None of these UN entities was involved in the design and daily operation of the centre. It was indeed a pity that Belarus did not benefit from the expertise of UN entities that have rich experience providing protection and assistance to migrants and asylum seekers. In addition, international organizations were not granted access to the border area when migrants were stranded.

**Pushbacks, use of violence and loss of life at the border**

On the Polish side, following the unprecedented movements at the border, in October 2021 Poland introduced legislative changes to relevant laws on migration and international protection, namely the Act on Foreigners and the Act on Granting protection to foreigners. The amended provisions enable Polish Border Guards to immediately return to the borderline those migrants who are apprehended while attempting to cross into Poland outside official crossing points. Moreover, legislative amendments have restricted the possibility to seek asylum for persons apprehended in the border area.

Under the new procedure, migrants are prevented to enter the territory of Poland. They are issued with a return order and a prohibition of entry to Poland and the Schengen area for a period ranging from 6 months to 3 years, regardless of their individual protection needs. The return order has immediate effect, and although it can be challenged, the appeal has no suspensive effect. We received information indicating that migrants do not have access to legal aid in this process.

In practice, migrants who are detected while crossing the border outside official points are taken to the Border Guard posts. If applicable, Border Guard issues a return order under the provisions of the Foreigners Act, and the decision is immediately executable. For those migrants that require medical attention, the assistance is given at the foreigners’ registration centre. Most migrants are provided with a “survival package” containing food, water and a thermic blanket and pushed back to the Belarusian side of the border. I learned from the Polish Border Guards that these returns are conducted at the most convenient moment to avoid detection by Belarusian Border Guards, regardless of the time and weather conditions. Sometimes returns are conducted during the night. Medical and humanitarian assistance coordinated by the Polish Border Guards in cooperation with local health services and civil society organizations are provided to those migrants who are in need, prior to their expulsion.

Border guards are obliged to draw up a report on a person who has been arrested for irregular border crossing and to issue a decision to remove them from the territory of the Republic of Poland. However, when the 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 a legal procedure or a return order to be initiated against the migrant to be removed from the territory of Poland. 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 are stranded in the forest for several weeks and have been subject to several times of pushbacks from both sides.

I am deeply concerned about the legislative framework that allows systematic practice of pushbacks conducted by the Polish Border Guards including against women and children, in violation of international human rights law.

I am particularly concerned about allegations of use of violence by the Border Guards of both sides pushing migrants back and forth. Although denied by both States, I have gathered testimonies and evidence inside and outside the country. Migrants of African descent are among the most affected. Analogous allegations regarding the use of violence of Belarusian law enforcement officers were addressed in my statement at the end of my visit to Belarus.

In addition, several migrants have lost their lives between the borders. The Belarusian authorities have documented 4 of such cases and collected data, while the Polish authorities have investigated 10 deaths. Each death requires an independent, transparent and thorough investigation. I call on authorities of both Poland and Belarus to cooperate with such processes. In the meantime, the total number of deaths as recognised by the authorities of both countries do not correspond to information I gathered.According to public sources, at least 19 migrants died in the forest in 2021 and many remain missing. The situation of migrants at the border reflects the geopolitical crisis in the region. Migrants should not be used or sacrificed.

Entry to the border area from the Polish side was restricted between 2 September 2021 and 30 June 2022, which has severely hindered access by civil society and humanitarian actors. It was not possible for any independent mechanisms to conduct monitoring activities of the situation at the border. Volunteers and activists have been barred from accessing the border of Poland and Belarus, and some have even faced prosecution for providing humanitarian assistance to migrants in distress at the border.

Following the suspension of visa by the Belarusian authorities to targeted nationalities in November 2021 and the closure of the Temporary Logistical Center on the Belarusian side this March, the situation at the border seems to have calmed down. However, confirmed by several sources, a number of migrants remain stranded in the forest and subject to “pushbacks”. Furthermore, Poland has finished the construction of a 5-metre-high fence made of steel and topped with razor wire through the protected forest along the border with Belarus. I fear the establishment of the fence will not deter people from trying to cross but simply increase the level of danger and potentially exacerbate the humanitarian situation of migrants stranded between the two borders.

To find solutions for these migrants, I call on Poland, Belarus and the EU to conduct constructive dialogue, most importantly to prevent further loss of life and ensure that the protection of the human rights of migrants is placed at the center of any solution adopted to address this situation. I encourage Belarus to work closely with international organizations including the United Nations to enhance the protection of the human rights of migrants and asylum seekers. Relevant UN entities should also provide human rights trainings to border guards and other law enforcement officials of both Poland and Belarus. To address this ongoing situation and provide safe pathways for migrants, it is essential for Belarus to grant meaningful access to relevant UN agencies, strengthen cooperation, rebuild partnership and regain trust and interest from donors. I also urge Poland to review its legislation and ensure access to asylum procedures and individual assessment of the protection needs of migrants.

I call on Poland and Belarus to grant full access to civil society and independent monitoring mechanisms to the border area. In this regard, it would be important to ensure a strong and independent role played by local civil society in both countries, as well as to allow international civil society organizations to conduct in situ monitoring.

**Right to asylum**

In Poland, the Polish Border Guards are responsible for receiving asylum applications. I learned that at the presence of staff of the National Commissioner for Human Rights, Border Guards accepted all asylum applications. However, I have also received information indicating that requests to apply for international protection in Poland were repeatedly ignored by Polish Border Guards. In this regard, I also express my concern over the new legislation adopted by Poland, which allows authorities to disregard such applications if the applicant has been stopped immediately after having crossed the border outside of 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.

**Deprivation of liberty of migrants**

As mentioned earlier, in Belarus, the Temporary Logistical Centre served as a de facto place of detention for migrants.

Furthermore, Polish domestic law allows for the detention of migrants in guarded centres for foreigners, which are closed immigration detention facilities under the control of the Polish Border Guard.

Despite the possibility provided by the Polish law to apply alternatives to detention, Polish courts routinely direct individuals intercepted at the Polish-Belarusian border to closed facilities, based on the “application” from the Polish Border Guard to place an individual in a guarded facility. Questions on the independence of courts’ decisions arise as asylum seekers subject to thus applications are routinely ordered to be placed in guarded facilities as the Border Guard requested in the applications.

I would like to acknowledge efforts made by Polish Border Guards in improving the conditions of stay of asylum seekers in closed facilities. Multiple teams are deployed to provide information on relevant procedures, social activities, educational programs, medical and psychological support to detainees at the closed facilities. 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. The Polish Border Guard, currently responsible for almost all aspects of the operation of closed detention facilities for migrants, should consider alleviate some of their activities and engage with specialized and independent local and international organizations which have rich experience and expertise in providing legal and social assistance to migrants.

I learned that the Office for Foreigners has the power to release asylum applicants from detention and they are doing so in several cases. Still, I have witnessed migrants belonging to most vulnerable groups remain detained in closed facilities, including families with children, pregnant woman, and persons with mental health conditions. I noted with much concern that at the Ground Floor of the closed facility where families with children are held, persons arrested at the border by the Border Guard for alleged criminal activity are kept for up to 48 hours until they are presented to a Court.

There were at least 5 babies at the closed facility. Some of these babies were born in Belarus and received their first vaccine there. I recognized their photos during my visit to the crisis room in Grodno where their mothers received care from the Belarusian Red Cross. Although I did not see them, according to Polish authorities, there are unaccompanied children in closed detention facilities. I reiterate that migrant children and their families should never be detained merely due to their migration status. Detention of any child for reasons related to their or their parents’ immigration status never responses to the best interest of the child and always constitutes a violation of the rights of the child in accordance with international human rights standers. 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 facility, with the support of local government and under the supervision of the Ministry of Education. I 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. I encourage relevant authorities to expand the use of these alternatives. More importantly, I urge the immediate release from detention of all children with their families, pregnant women and persons with mental health conditions to adequate care and reception facilities.

In addition, I note with concern that new immigration detention facilities are currently being built in Poland, including new facilities for the detention of families and children. These projects should be halted immediately. Instead, Poland should re-divert resources to invest in alternative reception and care for children, including those with their families.

Thank you