

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA POL 5/2021

3 September 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 42/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged denial of access to assistance and protection of 32 individuals, originally from Afghanistan, who are allegedly stranded at the border between Poland and Belarus and subject to dire living conditions.**

According to the information received:

Around 10 August 2021, a group of 32 individuals, originally from Afghanistan, including 4 women, 27 men and 1 girl, arrived at the border of Poland with Belarus, near the town of Usnarz Gorny.

Since then, this group of migrants have been stranded at the border area between two lines of armed soldiers and border guards of Belarus and Poland respectively. On the one hand, they are reportedly prevented by the Polish security personnel from formally crossing the border to Poland; on the other hand, they are allegedly stopped by the Belarusian border guards from turning back towards the direction of Belarus. They have limited access to food; no access to clean water, adequate shelter or any sanitation facilities. They do not have warm clothes suitable for the current weather at the border area where it is rainy and cold at night. Local inhabitants and other humanitarian actors tried to bring food and other items to this group of migrants but were allegedly not allowed by the Polish border guards.

Their health condition is deteriorating. According to the source, several of them have symptoms of renal failure and are in need of medical care. One woman, who is no longer able to move on her own and has respiratory disease symptoms, is in urgent need of medical attention. On 21 August 2021, despite the presence of a doctor on the spot for approximately 12 hours, this group of individuals were allegedly denied access to doctor by the Polish border guards. On the same day, lawyers of these individuals filed to the border guards a written motion for immediate access to medical care. The motion was reportedly ignored by the Polish border guards.

Allegedly, Polish border guards have ignored repeated and open requests from all individuals of this group to apply for protection in Poland, namely under international human rights and refugee laws. On 20 August 2021, legal representatives of this group of individuals attempted to submit written applications for international protection to the office of the Commander of the Border Guard in Białystok. They were reportedly refused admission.

Moreover, lawyers preparing asylum applications for these individuals are reportedly being denied access to their clients. According to the source, the Polish border guards have blocked means of communication and contact between these individuals and their lawyers as well as other actors who intended to provide assistance to them.

Without prejudging the accuracy of the information received, we are deeply concerned about the physical and mental integrity of all the individuals, including women and the girl, stranded at the border between Poland and Belarus since approximately 10 August 2021. They have been subjected to dire conditions in the border strip without adequate shelter and food, clean water, sanitation facilities and medical care, for three weeks, which may amount to cruel, inhuman or degrading treatment. In this regard, we wish to draw the attention of your Excellency's Government to article 7 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, of the International Covenant on Civil and Political Rights (ICCPR), to which Poland is a party since 1977, and to the right of all individuals, including migrants and asylum seekers, to the enjoyment of the highest attainable standard of physical and mental health, which is stated on Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Poland on 18 March 1977.

We are seriously concerned about the lack of access to asylum and other protection under international human rights law for this group of Afghani migrants. We would like to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the prohibition of arbitrary or collective expulsions and the principle of non-refoulement. Further, we would like to draw the attention of your Excellency's Government to General Comment No. 31 of the Human Rights Committee, which specifies that State obligations under Article 2 of the International Covenant on Civil and Political Rights entail "an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm ... either in the country to which removal is to be effected or in any country to which the person may subsequently be removed." The Special Rapporteur on the human rights of migrants underscored in his report on means to address the human rights impact of pushbacks of migrants on land and at sea that "effective access to territory is an essential precondition for exercising the right to seek asylum" (para 43, A/HRC/47/30).

We also wish to stress that migrants arriving at international borders, regardless of how they have travelled, should have access to their human rights, including an individualized, prompt examination of their circumstances necessary to

uphold the prohibition of arbitrary or collective expulsions.

Collective expulsions are prohibited as a principle of general international law. In this regard, we would like to draw the attention of your Excellency's Government to paragraph 10 of General Comment No. 15 (1986) of the Human Rights Committee, where the Committee stressed that article 13 of the International Covenant on Civil and Political Rights "would not be satisfied with laws or decisions providing for collective or mass expulsions". The Committee on the Elimination of Racial Discrimination has also recommended States to "ensure that non-citizens are not subject to collective expulsion". Furthermore, the prohibition of collective expulsion has also been recognized in regional conventions, including the Charter of Fundamental Rights of the European Union, art. 19 (1).

The principle of non-refoulement is codified in articles 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Poland is a party since 1989. Article 3 of the Convention provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture, ill-treatment or other irreparable harm. As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterised by its absolute nature without any exception. Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child and States must also consider the particular needs and vulnerabilities of each child, which may give rise to irreparable harm in the country of return.

We draw the attention of your Excellency's Government to OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders. In particular, guideline 9, which states that returns or removals should not violate the principle of non-refoulement and/or the prohibition of collective expulsion. The Guideline calls on States to consider the individual circumstances of all migrants at international borders, with appropriate attention being given to migrants who may be at particular risk at international borders who shall be entitled to specific protection and individualized assistance which takes into account their rights and needs.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the location and current situation of this group of individuals, including the women and the girl. Kindly include information on any plans of your Excellency's Government to address immediately their dire living conditions through providing food, water, clothing, adequate medical care and if possible, temporary shelter, as requested by the European Court of Human Rights.
3. Please indicate what measures have been taken by your Excellency's Government to protect the human rights of migrants at international borders, including ensuring their access to legal representatives and relevant procedures for persons in need of protection under international human rights and refugee laws.
4. Please provide information on any consideration given to the applications for protection under international human rights and refugee laws from this group of individuals, in particular, any assessment on the individual circumstances and protection needs of each of them. Kindly include information on measures taken or to be taken by your Excellency's Government to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a similar communication is transmitted to Belarus.

Please accept, Excellency, the assurances of our highest consideration.

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