

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially women and children

Ref.: UA LTU 1/2021
(Please use this reference in your reply)

25 November 2021

Mr. Donatas Tamulaitis,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 43/6, 42/22, 43/20 and 44/4.

In this connection, we would like to bring to the attention of your Government information we have received concerning **amendments made to the Law on the Legal Status of Aliens No IX-2206 (the “Aliens Law”) and its impact on the human rights of migrants, including asylum seekers.**

According to the information received:

In 2021, Lithuania has been affected by an unprecedented increase in border crossings of third country nationals including asylum seekers via Belarus: as of mid-August, over 4,110 migrants had been detained at the Lithuanian-Belarus border, while 81 were detained for the whole 2020. Although the majority of them originate from Iraq, over 40 different nationalities have been accounted for, including nationals from Cameroon, Syria, Afghanistan and other countries. Lithuanian authorities have reported that 90% of migrants detained at the border have requested asylum in Lithuania. This situation has put a great pressure on national reception and asylum processing capacities.

In response to this influx of migrants, on 2 July 2021, the Republic of Lithuania declared an “extraordinary situation” in the country. After this declaration, the Parliament of the Republic of Lithuania, following a fast-track procedure, approved legislative changes to legal instruments governing migration and asylum rules, by adopting amendments to the Law on the Legal Status of Aliens No IX-2206 (the “Aliens Law”) and the accompanying legislation. On 13 July 2021, the Parliament adopted Law No. XIV-506, which amended Articles 5, 71, 76, 77, 79, 113, 131, 136, 138, 139, 140 of the Aliens Law. Article 67 of this law was later amended on 10 August 2021, with the adoption of Law No. XIV-515.

These legislative changes have led to the mandatory and automatic use of immigration detention for all migrants including asylum seekers arriving in Lithuania and limited their rights and safeguards during asylum procedures. Additionally, amendments to the Aliens Law and subsequent practices adopted by the Lithuanian authorities have allegedly allowed for the push back of migrants including asylum seekers at the Lithuanian-Belarus border. While

some of the mentioned amendments are linked to a declaration of a “state of war, state of emergency or extraordinary situation due to mass influx of foreign nationals” (“state of emergency”) and are therefore only applicable on a temporary basis, other amendments are not linked to these exceptional situations.

Mandatory and automatic use of immigration detention

It has been reported that legislative changes introduced to the Aliens Law in July 2021 have affected the free movement of asylum seekers. The amendments have modified Article 5(6) of the Aliens Law, which now provides that migrants who have submitted asylum applications shall be temporarily accommodated at border control points, transit zones, and at State Borders Guard Service. In addition, in case of “state of emergency”, asylum seekers who have applied for asylum shall be accommodated in the places mentioned above or to be provided with temporary accommodation in other places adapted for that purpose.

Further, modified Article 5 explicitly stipulates that concerned asylum seekers shall not be granted with the right of freedom of movement in the territory of the Republic of Lithuania. Thus, asylum seekers who are admitted in Lithuania are in practice automatically deprived of liberty, as they are not allowed to leave the designated accommodation facilities until a decision of the Migration Department, which is under the Ministry of Interior, on the asylum application comes into force.

The amendments have also modified the time limits for the detention of asylum seekers. The maximum period of 28 days of the mandatory stay at the temporary accommodation places is now being automatically extended to 6 months during a state of war, emergency or extraordinary situation or event are declared, and without administrative or judicial review during this period. Moreover, since the holding of asylum seekers at the border is not considered as per domestic legislation as a detention process, the deprivation of liberty of migrants including asylum seekers is not ordered by a judicial authority, and it is not based on any evaluation of the individual circumstances of each person to assess the necessity and proportionality of detention. Although concerned asylum-seekers are held in de facto detention at the designated temporary accommodation facilities, they are not formally considered as admitted into the territory of Lithuania.

Similarly, new Article 113 (1) and (4) of the Aliens Law provides that migrants and asylum seekers may be detained when they enter the Republic of Lithuania irregularly by crossing its border during a state of war, emergency, or extraordinary situation due to a mass influx of migrants. In addition, Article 114 allows for the detention of migrants for a period up to 6 months, with the possible extension to 12 more months. Prior to these changes, migrants in an irregular situation within the territory of Lithuania were able to move freely. Allegedly, there have been proposals by the Ministry of Interior to further extend this time limit and authorize the indefinite detention of migrants in an irregular situation.

Thus, these provisions have reportedly led to the de facto deprivation of liberty in border regions of all migrants including asylum seekers entering the territory of Lithuania via Belarus. Since June 2021, over 3,000 persons, including families with children, have been mandatorily accommodated in closed facilities for over four months. The habilitation of new de facto and ad hoc detention sites has also been reported, such as abandoned schools and similar facilities, while other reports refer to the settlement of migrants in temporary tent camps in border guard stations. According to the State Border Guard Service, 19 accommodation facilities were operational in Lithuania as of 18 October 2021.

The perimeter around the tent camps, border guard stations and other accommodation facilities is reported to be surrounded by fences and guarded by State Border Guard Service officers. Asylum seekers and other migrants reportedly held in temporary accommodation facilities are not allowed to leave the fenced perimeter, and in some cases, they remain locked inside the buildings, only permitted to go outside for short periods during the day. In addition, some of the immigration detention facilities have been widely criticized due to alleged poor living conditions, such as insufficient sanitary facilities, scarce sanitary materials, delayed supply of clothes, lack of privacy, over-crowding conditions, lack of social, psychological and health care services, among other issues. Asylum seekers, including families with children, pregnant women, and other vulnerable persons, have been reportedly staying in tents without heating. There have also been reports of demonstrations, riots, and violence in some of the temporary accommodation facilities, as well as allegations of the use of force related violations by security guards. Recent reports further indicate allegations of torture and ill treatment of migrants and asylum seekers by security officials at several temporary accommodation sites.

It has also been brought to our attention that the law does not provide for any exception or prohibition for the detention of children and persons with vulnerabilities, in case of a state of war, emergency or extraordinary situation. According to the information received, among the migrants detained at the Lithuanian-Belarus border in August 2021, at least 1,500 were children, of which 150 were unaccompanied.

Limited access to asylum procedures

Furthermore, amendments to the Aliens Law and subsequent practices adopted by Lithuanian authorities allegedly allow for the expulsion of asylum seekers and other migrants to Belarus, without an individual assessment of the circumstances of the person and without access to asylum procedures. On 2 August 2021, the Ministry of Interior of Lithuania issued an order that allegedly provides for the non-admission and redirection of all asylum seekers and other migrants arriving irregularly at the Lithuanian-Belarus border. Moreover, it is believed that border guards were authorized by this order to use deterrence and coercive measures, including physical force. Since this decision was issued, over 4,000 individuals have been reportedly expelled to Belarus, without allowing them to request for asylum or other forms of protection. In August 2021 alone, approximately 1,340 migrants were refused admission, while only in 44 cases admittance was granted based on humanitarian grounds.

These practices have reportedly resulted in several life-threatening situations, whereby asylum seekers and other migrants were stranded in the border area without access to food, water, and shelter.

The legislative changes adopted by Lithuania have reportedly limited the access to asylum procedures, by introducing in the law the possibility to allow refusal to accept an asylum application in exceptional circumstances. This way, new provisions of Article 67 (1), adopted on 10 August 2021, stipulate that a foreign national's application for asylum shall not be accepted after apprehension at the border, except at official border crossing points. As a result of these provisions, individuals that attempt to cross the border in an irregular manner, as well as those that have been detained due to their irregular crossing, are not entitled to apply for asylum while the state of emergency is declared.

In addition, Lithuanian authorities have reportedly adopted a new practice by which all applications for asylum are now being reviewed through an accelerated procedure of examination, within 10 working days from the lodging of the asylum application. While Articles 81 (2) and 76 (4) of the previous Aliens Law already allowed for the accelerated examination, it was reserved only for specific situations. Migrants in vulnerable situations, such as unaccompanied children, survivors of torture, rape, or other forms of physical or gender and sexual based violence, were always exempted from this accelerated procedure. However, amended Article 76 (6) of the Aliens Law has removed the possibility of applying special procedural guarantees to persons in vulnerable situations, by providing that this exemption is no longer applied in case of a state of war, emergency or extraordinary situation or event.

Further allegations refer to asylum applicants being pressured to “voluntarily” return to their countries of origin. Government officials who process asylum claims are reportedly being pressed to conduct sham interviews and to coerce applicants into voluntary return, allegedly by explaining that the only alternative to voluntary return would be deportation by force. Officials are allegedly required to quickly decide whether to register applicants as “illegal” or “asylum seeker” after a 20-minute interview.

On 19 October 2021, the Migration Department reported that one third (1,289) of the asylum applications of migrants crossing the border with Belarus, of which 878 resulted in denial of asylum and 409 were terminated due to the return of migrants to their countries. Refugee status was only granted to two asylum seekers. The same department has also informed that 260 migrants in irregular situation had been deported from Lithuania since the beginning of 2021, and that currently 414 migrants remain awaiting deportation, after the refusal of their asylum applications.

Rights and safeguards during the asylum procedure

Legislative changes to the Aliens Law have reportedly restricted the right of asylum seekers to appeal to an independent authority against negative decisions and have removed the suspension of implementation of the appealed decision, allowing for their deportation while their appeals are still under

consideration. In this regard, amended Article 136 and new Articles 135 (1) and 135 (2) introduce a new pre-trial or administrative stage in the compliant procedure against the decisions of the Migration Department. The administrative appeal should be lodged within 7 days from the date of the decision, and the Migration Department is required to examine the appeal and take a decision within 7 days from the moment of its receipt. Such an appeal, however, does not suspend the enforcement of the initial decision of the Migration Department. This pre-trial appeal procedure is not tied to the “state of emergency” but applies to all cases. The lack of suspensive effect of an administrative appeal against a negative asylum decision may lead to the return of asylum seekers before any decision of the administrative appeal process thus undermines the right to appeal of asylum seekers and their protection against refoulement.

Furthermore, amended Article 71(1) has allegedly temporarily restricted other rights and guarantees during the declaration of a “state of emergency”, which may affect the effective access and participation of asylum seekers during the asylum procedure. Under these circumstances, individuals applying for asylum are required to formally request legal representation, while available legal services are reportedly very limited. In addition, it has been reported that access to information, interpreters, social and psychological services, refugee assisting organizations and access to employment have also been restricted under Article 71(1).

Without prejudging the accuracy of the information received, we are deeply concerned about the legislative amendments made to the Aliens Law in July and August 2021 and its impact on the human rights of migrants, including asylum seekers. Particularly, we note with serious concern that changes made to Article 5 of this law have reportedly restricted the free movement of migrants in the territory of Lithuania and have allegedly led to the mandatory and automatic deprivation of liberty of all migrants including asylum seekers crossing the border from Belarus, for prolonged periods of time and without access to an administrative or judicial review. In relation to these allegations, we would like to recall that, according to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the Universal Declaration of Human Rights (UDHR) and article 9.1 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Government on 20 November 1991.

In this respect, we would like to draw your Government’s attention to the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, “alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure”. The Working Group also underlined that such “[D]etention must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case” and that it “must not be punitive in nature and must be periodically reviewed as it extends in time.” Furthermore, we recall that commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the

Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

In addition, we are deeply concerned by the reports of detention of migrant children, including unaccompanied children, in temporary accommodation sites. We wish to emphasize that 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 in accordance with the international human rights standards. We also recall that all human rights norms and standards are applicable to migrant children, being of particular relevance the provisions established in the Convention on the Rights of the Child, ratified by your Government on 31 January 1992. We refer your Government to the report of the Special Rapporteur on the human rights of migrants on "Ending immigration detention of children and providing adequate care and reception for them" (A/75/183), where the Special Rapporteur provides a set of recommendations to Member States in this regard.

Moreover, we would like to recall that, in accordance with the provisions of international human rights law, irregular entries should not be treated as criminal offences: the act of seeking asylum is legal and border crossing without authorization should be considered at most an administrative offense. Criminalizing irregular migrants based on their immigration status can lead to other human rights violations, and the use of the term "illegal" to describe undocumented migrants or other persons in an irregular situation contributes to creating an environment hostile to migrants, increasing xenophobia and discrimination towards the refugee and migrant population.

In this connection, we would also like to express our concern regarding the situation of asylum seekers and other migrants in the territory of the Republic of Lithuania who have allegedly been detained for several months at temporary accommodation facilities, where they are reportedly subjected to dire living conditions. We note with particular concern recent allegations of ill-treatment and torture at several immigration detention facilities. In connection with these allegations, we would like to stress the absolute and non-derogable prohibition of torture and ill-treatment codified in Articles 2 and 16 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), to which Lithuania is a party since February 1996. In this regard, we would also like to recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. In addition, article 10 of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Furthermore, we would like to draw your Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). We further recall that detention conditions and treatment should always comply with international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as migration status, age, gender, disability, medical condition, previous trauma or membership in a minority group.

Furthermore, the Special Rapporteur on Torture indicated that “Migration laws, policies and practices that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture or ill-treatment, or that knowingly or deliberately prevent them from exercising ancillary rights designed to protect them against such abuse, are conclusively unlawful and give rise to State responsibility for the ensuing harm, regardless of the direct attributability of the relevant acts of torture or ill-treatment. Moreover, whenever States fail to exercise due diligence to protect migrants from violations by private actors, to punish perpetrators or to provide remedies, they are acquiescent or complicit in torture or ill-treatment.” (A/HRC/37/50, para. 67).

On the other hand, we are seriously concerned by the amendments to the Aliens Law that allegedly limit the access of migrants to asylum procedures and undermine safeguards during the process. We wish to refer to Article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution". Moreover, asylum seekers should have access to a full and fair hearing of their claims, with adequate legal representation, and should be able to appeal decisions before they are returned to their country of origin. Expedited asylum procedures without the right to appeal could result in asylum seekers being returned to countries where they could face serious human rights violations, in violation of the principle of non-refoulement.

Furthermore, we would like to highlight our most serious concern regarding the allegations of pushbacks of asylum seekers and other migrants from Lithuania to Belarus, reportedly in the absence of an individual assessment of the circumstances and protection needs under international human rights and refugee law of each person. In this respect, we would like to draw the attention of your Government to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that migrants arriving at international borders, regardless of how they have travelled, should have access to individualized, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights and refugee protection needs, including access to asylum, in an age-sensitive and gender-responsive manner. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

While we understand that the increasing arrival of migrants through the border with Belarus has put a significant pressure on national reception capacities, we wish 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 international law, including the principle of non-refoulement and the prohibition of arbitrary or collective expulsions. The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law and is explicitly codified in Article 3 of the CAT, and in Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Lithuania on 14 August 2013. Article 3 of the CAT 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.

Collective expulsions, on the other hand, are prohibited as a principle of general international law. In this regard, we would like to draw the attention of your 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”(Committee’s general recommendation No. 30 (2004), para. 26) . Furthermore, the prohibition of collective expulsion has also been recognized in regional human rights framework, including the Charter of Fundamental Rights of the European Union, art. 19 (1). This prohibition requires an expulsion to be examined and decided individually, and to be based in the decision of a competent authority, and in accordance with the law and with respect of due process and procedural safeguards.

Additionally, in relation to the protection of victims of trafficking and persons at risk of trafficking, we recall the obligations on States to identify victims and persons at risk of trafficking who are seeking asylum, and to provide specialised assistance to victims of trafficking. We recall that victims of trafficking, should not be deprived of their liberty, including while seeking asylum or other forms of international protection.

As a principle, it is essential to the object and purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency’s Government in 2003, namely, to protect and assist victims of trafficking with full respect for their human rights. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR). Recommended Principle 7, concerning protection and assistance to victims of trafficking, provides that “trafficked persons shall not be detained, charged or prosecuted.” The obligation of non-punishment applies in the context of detention. Persons who are presumed or identified as trafficking victims must be removed from detention as soon as possible and granted appropriate assistance and protection in specialised facilities. We would also like to remind Your Excellency’s Government the provisions of UNHCR's Guidelines on Human Trafficking. We further wish to recall that the obligation of non-refoulement also includes protection against trafficking and re-trafficking. The Group of Experts on Action against Trafficking Guidance on Trafficking and Asylum provides in the guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficking to international protection that “States are required to ensure that all persons responsible for determining asylum claims are trained in the identification and referral of victims of trafficking to specialised assistance.”

We would also like to recall to your Excellency's Government that the positive obligations arising under Article 4 ECHR include the duty to take operational measures to protect victims, or potential victims, of trafficking. Article 4 ECHR, and Article 3 ECHR (which incorporates the obligation of non-refoulement), are both non-derogable norms.

Finally, we would like to recall the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

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 person(s) 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/or comment(s) you may have on the above-mentioned observations.
2. Please provide information regarding alternative and less restrictive measures to deprivation of liberty that can be provided to asylum seekers and other migrants, including persons who entered the territory of Lithuania irregularly, in order to ensure that administrative detention for immigration reasons is used only as a measure of last resort and for the shortest possible time.
3. Please provide information on measures taken or to be taken by your Government towards ending immigration detention of children and their families, as well as efforts made to provide effective protection, adequate care and non-custodial reception for migrant children.
4. Please provide detailed information on temporary accommodation facilities in which migrants and asylum seekers are being detained, including living conditions, and please explain how this is compatible with international human rights obligations. Kindly include information on any plans of your Government to address immediately their dire

living conditions at these facilities.

5. Please indicate any consideration to thoroughly review the amendments to the Aliens Law to address the concerns raised, as well as to bring the Law in line with relevant standards under international human rights and refugee law, particularly with regard to the right to liberty, the right to seek asylum, the principle of non-refoulement, the prohibition of collective expulsions, and other aspects mentioned in the present communication.
6. Please indicate what measures have been taken by your Government to protect the human rights of migrants at international borders, including to ensure their effective access to asylum and other international protection procedures, in accordance with Lithuania's obligations under international human rights and refugee laws.
7. Please indicate measures taken or to be taken by your Government to ensure the full respect of 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.

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 accept, Mr. Donatas Tamulaitis, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Nils Melzer
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