

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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(Please use this reference in your reply)

24 January 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 43/6 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 attacks, short-term detentions, stop and search, harassment, and ill-treatment of human rights defenders who provide humanitarian assistance to migrants and asylum-seekers and monitor their human rights situation near the Poland-Belarus border, as well as the alleged lack of legal basis for the actions of the military.**

Mr. **Jakub Sypiański** is a human rights defender and a volunteer interpreter assisting migrants and asylum-seekers.

Mr. **Maciej Moskwa** is a human rights defender and a photojournalist.

Mr. **Maciej Nabrdalik** is a human rights defender and a photojournalist.

Ms. **Olivia Kortas** is a woman human rights defender and a journalist.

Mr. **Christoph Kürbel** is a human rights defender and a journalist.

We previously wrote to your Excellency's Government regarding the alleged denial of access to assistance and protection of migrants stranded at the border between Poland and Belarus and subject to dire living conditions in the communication sent on 3 September 2021 (UA POL 5/2021). We thank your Excellency's Government for the response dated 27 September 2021. However, we remain concerned given the new allegations outlined below.

According to the information received:

Since August 2021, thousands of migrants from the Middle East and other regions have arrived in Belarus and attempted to enter Poland by foot, often through non-official crossing points in the forests, in harsh and life-threatening conditions. Polish border guards, police and army officers have reportedly forced the migrants back into the forests on the Belarusian side. As a result,

thousands of migrants are reportedly in the forests now, without adequate shelter, food, clean water, sanitation facilities, warm clothes, and access to medical care. This includes pregnant women, families with young children, and people who are elderly or have disabilities. Reportedly, at least 19 persons have died in the forests, including two children.

On 2 September 2021, the President of Poland declared a 30-day state of emergency covering 183 localities in Podlaskie Voivodeship and Lubelskie Voivodeship, along the border with Belarus. The state of emergency was extended by 60 days on 30 September 2021. Restrictions included a ban on staying in the area covered by the state of emergency for non-residents, the prohibition of recording and photographing certain objects and areas, and limited access to public information on activities carried out in the area. On 2 December 2021, the state of exception expired but elements were introduced into ordinary legislation – a new Article 12a in the 1990 Protection of the State Border Act, in force as of 1 December 2021, effectively providing for a “permanent state of exception”. A ministerial decree from 30 November 2021 – in force until 1 March 2022 – further prohibits non-residents from entering the same 183 localities.

Since August 2021, thousands of Polish soldiers have been reportedly assisting border guards in securing the border. Among other assistance, they reportedly carry out short-term detentions, identification, and searches of people believed to be either migrants or human rights defenders helping them, including in areas located outside of the state of emergency zone. According to Article 11b of the Act of 12 October 1990 on the Border Guard (Ustawa z dnia 12 października 1990 r. o Straży Granicznej), assistance of the armed forces to border guards must be authorised by a decree of the President based on the request of the Prime Minister. In urgent cases, the Minister of Defence may decide to provide assistance, but an immediate decree of the President must approve his decision for it to be lawful. However, the armed forces reportedly have been acting based on a classified decision of the Minister of Defence, making the scope of their powers unclear. A decree it reportedly yet to be adopted.

In addition to the above, the following allegations have been brought to our attention:

#### *Stop and search of Jakub Sypiański*

At midnight on 26 November 2021, Mr. Jakub Sypiański was driving home. About four kilometres from Michalowo in Podlaskie Voivodeship (in a place reportedly located outside the state of emergency zone), an unmarked civilian car reportedly pulled alongside him after following him for some time.

Several armed men in military uniforms reportedly got out of the car and demanded Mr. Sypiański to open the window. When he did, they allegedly forcibly opened the door, took the keys out of the ignition, and tried to pull him out of the car, grabbing him by his legs, but were unable to because of the seatbelt.

Then, about four to seven armed and uniformed officers reportedly surrounded the car. They allegedly did not identify themselves or explained the reason for stopping Mr. Sypiański. They asked him whether he was going to the refugee meeting place and threatened him. They also reportedly opened the trunk with the keys they had taken away.

Both the uniformed individuals and Mr. Sypiański called border guards and police. However, upon arrival, the border guard and the police reportedly refused to document the alleged attack on Mr. Sypiański and did not question the uniformed individuals.

On 26 November 2021, the Territorial Defence Forces (a subdivision of the armed forces) reportedly admitted that the uniformed individuals were their officers. On 3 December 2021, Mr. Sypiański filed a formal complaint against their actions; as of now, the status of the complaint is unclear.

#### *Stop and search of three photojournalists*

On 16 November 2021, Mr. Maciej Moskwa, Mr. Maciej Nabrdalik, and a Czech photojournalist drove together to the village of Wiejki near Michalowo, Podlaskie Voivodeship, to document the human rights situation of migrants at the border.

Around 4 pm, they photographed the outside of the military camp near Wiejki. The area was reportedly located outside the state of emergency zone, and photographing was not banned. Before photographing the camp, the journalists introduced themselves to the soldiers guarding its main gate and informed them of their intentions.

On their way back to Michalowo, around 4:10 pm, the journalists' car was reportedly stopped by the armed soldier who had previously spoken with them at the gate. Then, at least eight more armed soldiers in balaclavas reportedly surrounded the car and demanded that the journalists get out of it.

The soldiers reportedly did not identify themselves, nor did they explain the legal basis of their actions or react to the reminders about the press status. The soldiers reportedly used offensive language and repeatedly threatened the journalists, also using implied death threats against them.

The soldiers reportedly demanded the journalists to stand separately, to take off their jackets despite the cold weather, and to put their arms above their heads. The soldiers allegedly searched the journalists and tightly handcuffed them for about an hour. Reportedly, Mr. Moskwa's handcuffs were applied incorrectly, causing severe pain and blood marks. A military officer, who appeared to be a commander, reportedly commented on this by saying that "it should hurt".

The soldiers also reportedly searched the car, removed the equipment and personal belongings, and viewed the content in the cameras, even though the journalists had warned that they contained material covered by source confidentiality. Another military officer, who also appeared to be a commander,

reportedly demanded the journalists to identify the equipment and asked about their work, including about the migrants and asylum-seekers who appeared in the photos. The soldiers reportedly also read out and photographed the content of received messages on the journalists' phones and the numbers of people who contacted them during the stop and search.

About an hour after the apprehension, police arrived but reportedly stayed inside their car while the journalists remained handcuffed. Once the handcuffs were removed, the police exited the car. Despite the journalists' repeated requests, they reportedly refused to document the search and handcuffing, and to identify the military officers involved. They also allegedly viewed the content in the cameras.

The journalists were eventually freed, after being held for about 1.5 hours, however, Mr. Moskwa allegedly did not understand Polish and was not provided an interpreter for the entire duration of the stop and search.

In an interview on 20 November 2021, the Minister of Defence publicly encouraged the soldiers for the incident. An online smear campaign was reportedly started against the journalists following this statement by the Minister of Defence.

On 23 November 2021, Mr. Moskwa and Mr. Nabrdalik filed a complaint regarding the short-term detention and search with the district court; its status is unclear.

#### *Stop and search of a documentary-making group*

On 30 November 2021, Ms. Olivia Kortas and Mr. Christoph Kürbel were filming a documentary about the situation of migrants in the forest near the village of Narewka, Podlaskie Voivodeship, on assignment by the YouTube Channel "Y-Kollektiv" by the public German broadcaster. Two local Polish residents were helping the journalists. Around 12:50 pm, four armed soldiers of the Territorial Defence Forces reportedly stopped the four of them outside the state of emergency zone.

The soldiers reportedly checked their IDs. The four of them were then reportedly accompanied to the road behind which the state of emergency zone began but did not cross it. Twelve armed soldiers reportedly surrounded them, demanded that they stop filming, put the camera on the ground, and stay in line, keeping their hands outside their pockets.

Ms. Kortas took a screenshot of the map showing their location. One of the soldiers reportedly shouted at her to put her phone away and demanded that she hand it over, which she refused to do due to the lack of legal basis.

Approximately half an hour later, the border guard officers came by and let them leave.

Without wishing to prejudge the accuracy of the information received, we wish

to express concern as to the alleged attacks, short-term detentions, searches, harassment, and ill-treatment of human rights defenders and journalists helping migrants and asylum-seekers near the Poland-Belarus border and documenting their human rights situation, as well as the alleged lack of legal basis for the actions of the military. In this regard, we are seriously concerned by the restricted access of journalists and human rights defenders to the border area, where the migrants and asylum-seekers are, to report on the situation and possible human rights violations, and to provide assistance. This concern is compounded by the formalisation of these restrictions through the implementation of the amendment to the Protection of the State Border Act. We are also deeply concerned about the physical and mental integrity of all the migrants and asylum-seekers currently stranded at the border, who are allegedly subjected to dire conditions in the forest, which may amount to cruel, inhuman or degrading treatment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comments you may have on the allegations mentioned above.
2. Please provide the details, and where available the results, of any investigation, which may have been carried out in relation to each of the cases described in the allegations above. If no investigation has taken place, or if it has been inconclusive, please explain why and how this is compatible with your Excellency's Government's obligations under international human rights law.
3. Please specify the legal basis for police-like interventions by the military and please explain how they are compatible with your Excellency Government's obligations under international human rights law and standards.
4. Please indicate what measures have been taken to ensure that human rights defenders helping migrants and asylum-seekers near the Poland-Belarus border and documenting their human rights situation are able to carry out their legitimate work in a safe and enabling environment without fear of harassment, threats, attacks or acts of intimidation of any kind towards them and their families.
5. Please provide information on any plans of your Excellency's Government to immediately address their dire living conditions of migrants and asylum seekers stranded at the border or living in the forests, through providing food, water, clothing, adequate medical care and if possible, temporary shelter, as requested by the European Court of Human Rights.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

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

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Felipe González Morales  
Special Rapporteur on the human rights of migrants

## **Annex**

### **Reference to international human rights law**

In connection with the above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We would like to refer your Excellency's Government to Articles 9 and 19 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by Poland on 18 March 1977, which guarantee the right to freedom of opinion and expression, including the right to freedom of information, and the right not to be subjected to arbitrary arrest and detention. In this respect, we wish to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression (see CCPR/C/GC/35, para. 17). We would also like to refer your Excellency's Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, as enshrined in Article 7 of the ICCPR and Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Poland on 26 July 1989.

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Article 19 protects inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). As expressed by the Committee in its General Comment no. 34, "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights" (para. 13). The interference in the freedom of the press is therefore a particularly serious restriction of the rights under Article 19 of the ICCPR. As further expressed by the Committee, "the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, id para. 42. Furthermore, and as generally held, attacks against individuals for the exercise of their right to freedom of expression is incompatible with the Covenant, see CCPR/C/GC/34 para 23. Any such attacks should be subject to independent and impartial investigations, id.

In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Furthermore, we would like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to Articles 1 and 2 of the Declaration,

which state that everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Likewise, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;
- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters; and
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to refer to the report of the Special Rapporteur on the human rights of migrants, on the right to freedom of association of migrants and their defenders (A/HRC/44/42). In this report, the Special Rapporteur recommended States to ensure that criminal justice laws are not misused to punish migration related humanitarian acts or to harass civil society organizations that work with migrants (para. 89, (1)).

Concerning the situation of migrants and asylum seekers reportedly stranded at the Poland-Belarus border and living in dire conditions in the forest, 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 ICCPR, 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 would also like to recall Objective 7 of the Global Compact for Safe, Orderly and Regular Migration, by which States committed to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by



assisting them and protecting their human rights, in accordance with our obligations under international law.

Finally, we would like to recall that 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".