

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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(Please use this reference in your reply)

30 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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, 42/22, 45/3, 44/5, 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 situation of migrants and asylum seekers, including families and children, who have reached or attempt to reach Poland through its border with Belarus. Concerns include alleged deaths, disappearances and stranded individuals at the border, as well as those who are held in closed detention centres for foreigners in Poland, where they are allegedly subjected to dire conditions.**

Concerns regarding alleged living conditions of migrants and asylum seekers at the border between Poland and Belarus were subject to previous communication JUA POL 5/2021, transmitted by Special Procedures' mandate holders on 3 September 2021. We would like to thank your Excellency's Government for the detailed reply received on 11 November 2021. However, we remain concerned about ongoing allegations concerning the situation of migrants and asylum seekers at the Polish-Belarusian border.

According to the information received:

Since August 2021, thousands of third-country nationals, including asylum seekers, have attempted to enter Poland through its border with Belarus, by using non-official crossing points in the forests. Reportedly, the majority of arriving migrants compose families with children, mainly originating from Iraq, Afghanistan, Syria, and Yemen. This rise in arrivals has been followed by the adoption of policies and practices by Polish authorities that have reportedly prevented access to the territory of Poland and to international protection procedures in the country. Of particular concern are the ongoing reports of alleged pushback practices conducted by the Polish Border Guard, sometimes violently, since the beginning of the humanitarian emergency last August.

Tensions at the Polish-Belarusian border were temporarily de-escalated, and lower movements of arrivals were registered between December 2021 and

February 2022. However, reports of migrants and asylum seekers attempting to cross the border to arrive in Poland continue, and concerns regarding the human rights situation of both new arriving migrants and those already in detention in the country persist.

Migrants and asylum seekers stranded at the border with Belarus

In response to the unprecedented influx of new arrivals, Poland amended the Act on Foreigners of 12 December 2013 and the Act of 13 June 2003 on Granting Protection to Foreigners in the Territory of the Republic of Poland. In line with the new provisions adopted, which entered into force on 26 October 2021, migrants and asylum seekers that are apprehended while crossing irregularly are reportedly prevented from entering the territory of Poland. In addition, they are issued with a return order and a prohibition of entry to the country from 6 months to 3 years, regardless of their protection needs. As per Article 303b of the Act on Foreigners, the return order can be appealed but has immediate effect. These provisions have significantly restricted access to the territory of Poland.

In addition, it has been reported that arriving migrants are still returned to the border line by Polish authorities and forced back to the territory of Belarus. As they are unable to enter the territory of Poland, many migrants, including families and children, reportedly remain stranded in the forests, where they are exposed to extreme cold temperatures and heavy snowfall during the winter, without access to food, shelter, clean water, warm clothes, sanitation facilities or healthcare services. We have also received reports of families that have been separated at the border, with some of them reporting losing their children in the forest while attempting to cross the border.

Allegedly, at least 19 persons died in the border area in 2021, including two children, and a 26-year-old man was reportedly found dead in the forests in February 2022. While we have not received information on the circumstances of each case of death, we understand that there have been investigations into some of the cases. Little information is available on whether all the bodies have been identified and repatriated. In the absence of confirmation on the cause of death of each case, it is believed that the extreme conditions migrants faced during prolonged periods and the lack of humanitarian assistance are among the most relevant factors connected to their deaths. Moreover, over 70 persons were reported missing by their families since mid-October 2021.

However, it has been difficult for civil society actors to monitor and document the situation due to restrictions to access the border area imposed by the authorities, so it is believed that these figures could be higher. Restrictions to the area were first imposed on 2 September 2021, under the declaration of a state of emergency by Poland, which introduced an “entry ban” zone along the entire border with Belarus, covering 183 localities. The state of emergency was extended on 30 September and through on 2 December 2021. Shortly before the state of emergency was due to expire, amendments were introduced into ordinary legislation – a new Article 12a in the 1990 Protection of the State Border Act – effectively providing for a “permanent state of exception”, which has further prohibited non-residents from entering the same 183 localities.

Allegedly, humanitarian actors, human rights defenders, the media, activists, and medical personnel are still banned from entering the border zone.

It has also been reported that amendments introduced in 2021 to the Act on Granting Protection to Foreigners on Protection have allegedly restricted the possibility to seek asylum for persons apprehended in the border area. Under new provisions in Article 33, the Head of the Office for Foreigners may disregard the application for international protection filed by a person who was intercepted while crossing the border irregularly. Some exceptions are provided in case the person arrived directly from a territory in which their life or liberty was under threat of persecution; if credible causes for the irregular entry are presented; and if the person filed an application for granting international protection immediately upon crossing the border.

Furthermore, on 25 January 2022, Poland started the construction of a wall through the protected forest along the border with Belarus. The wall, which is reportedly made of steel and topped with razor wire, will further prevent access to the territory of Poland, potentially exacerbating the above-mentioned human rights and humanitarian situation of migrants and asylum seekers stranded between at the borders.

Detention of migrants and asylum seekers in guarded centres for foreigners

Moreover, it has been alleged that a high number of migrants who are apprehended at the border are placed in detention for potentially prolonged periods of time. According to the information received, migrants and asylum seekers who are the subject of a return order are detained since the initiation of the return procedure, following a decision by the court. Despite the possibility provided by the law to apply alternatives to detention, it has been alleged that Polish courts are routinely directing individuals intercepted at the Belarusian border to guarded centres for foreigners, which are closed detention facilities under the control of the Polish Border Guard.

Legal provisions reportedly allow for the detention of migrants and asylum seekers since the initiation of a return procedure, which can last up to 12 months. On the other hand, detention during asylum procedures is reportedly allowed for a maximum of 6 months. As both procedures may overlap, the period of detention could extend up to 18 months in practice.

According to the information received, approximately 1,800 migrants are currently in detention in Poland. Persons seeking international protection and persons with vulnerabilities are also placed in detention, reportedly without any vulnerability assessment. Children are also detained in guarded detention centres: as of February 2022, over 300 children were reportedly detained in institutions, such as, in Kętrzyn, Czerwony Bór, Przemyśl and Biała Podlaska, including unaccompanied children over 15 years old and families with children. In this regard, it has been brought to our attention that both the Act on Foreigners and the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland allow families with children and unaccompanied children to be placed in guarded centres.

We have also received concerning reports referring to the conditions of detention in many of guarded detention centres for foreigners. Allegedly, these centres are overcrowded, and migrants and asylum seekers are subjected to poor living and sanitary conditions, with insufficient medical and psychological care. Food rations are reportedly scarce, and detained migrants must wait outside the buildings before receiving their rations, where they are exposed to low temperatures, often for a long time. Reportedly, many of the detained migrants do not have warm clothes or shoes. They also reportedly sleep in overcrowded rooms where they lack privacy.

Furthermore, access to the Internet is limited, which reportedly prevents detained persons from contacting their relatives and lawyers. Migrants and asylum seekers reportedly do not have access to information regarding the state of the proceedings which they are subjected to – such as return and asylum procedures – in a language that they can understand. The alleged poor living conditions in guarded centres for foreigners, together with the reported lack of efficient procedures, have allegedly been the reason for numerous protests during the past months in several guarded detention centres, including hunger strikes and suicide attempts.

The most widely criticized detention centre is the temporary guarded detention centre in Wędrzyn, which was established in mid-September 2021 in an active military training camp, as a response to the increase in the number of migrants and asylum seekers apprehended at the Belarusian border. Military buildings in the camp were adapted into residential buildings to accommodate migrants deprived of liberty. Reportedly, the residential buildings are surrounded by concertina razor wire, posing a threat to the security and integrity of those detained. Bars have also been installed on the outer side of the windows. Furthermore, it has been reported that, since the detention facility in Wędrzyn was established, the training military area has remained active: sounds of shots and explosions are often heard from the detention facility, causing additional stress and trauma to persons in detention, especially to those who have fled from wars and armed conflict.

It has been reported that, in addition to closed centres of detention for foreigners, there are government-run open centres, which are operated by the Office for Foreigners, dependent of the Ministry of Interior. These centres reportedly provide accommodation exclusively for those with accepted applications for international protection. According to the sources, however, almost none of the migrants and asylum seekers who entered Poland through the Belarusian border have been placed in these open centres, despite the reported presence of applicants for international protection among them.

Without prejudging the accuracy of the information received, we are deeply concerned about the ongoing humanitarian situation affecting migrants and asylum seekers at the Polish-Belarusian border. In this regard, we would like to express our deepest concern regarding the physical and mental integrity of all migrants reportedly stranded at the border, including families and children, allegedly living in dire conditions in the forests, which may amount to cruel, inhuman or degrading treatment and may result in violations of the rights to life and personal integrity. In this regard, we would like to remind your Excellency's Government of Articles 3 of the Universal

Declaration of Human Rights and 6 (1), 7, 9 and 16, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights. We would also like to recall the absolute and non-derogable prohibition of torture and other forms of ill-treatment, as codified in articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We especially emphasize our deepest concern and regret over the reported deaths, including of 2 children, and disappearances of migrants during the past year, and call upon Polish authorities to conduct effective, impartial, and transparent investigations into all cases in order to clarify the circumstances of the reported deaths. With regard to disappeared migrants and asylum seekers, we call upon your Excellency's Government to take all necessary measures to search for them and establish their fate and whereabouts and, in the event of their death, to exhume, identify, respect and return their remains to the families. In this context, we would like to refer to the standards set out in the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death* (2016)), whereby investigations include the identification of the dead or missing person and the determination of the cause of death, among other obligations.

We also note with concern the ongoing policies and practices adopted by Polish authorities to restrict access to the territory in Poland, including amendments to the law, alleged pushback practices and the beginning of the construction of a metal wall along the border. We are concerned that these policies may contribute to exacerbating the already dire situation faced by migrants and asylum seekers at the Polish-Belarusian border.

Similarly, we are deeply concerned about the well-being of migrants and asylum seekers who are allegedly detained in overcrowded guarded detention centres for foreigners in Poland. Particularly, we wish to express our serious concern regarding alleged dire conditions of detention, which may also amount to cruel, inhuman or degrading treatment or punishment. We are also gravely concerned that migrants are held in immigration detention for prolonged periods of time which can reportedly extend over a year. In connection with these allegations, we would like to recall that, according to international human rights standards, detention for immigration-related purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available.

Furthermore, we wish to express our most grave concern regarding the alleged detention of migrant children in closed detention centres, including unaccompanied children and children with their families. We also note with particular concern that both the Act on Foreigners and the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland allow families with children and unaccompanied children to be placed in guarded centres. In this regard, 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.

Finally, we also note with concern the amendments to the Act on Foreigners of 12 December 2013 and the Act of 13 June 2003 on Granting Protection to Foreigners in the Territory of the Republic of Poland, which allegedly restrict the access of

migrants to asylum procedures if they are apprehended crossing the border irregularly. In relation to this, 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”. States should ensure measures adopted under the state of emergency do not result in denying effective access to asylum and other protection procedures under international law. Denial of access to territory without safeguards to protect against *refoulement* cannot be justified on the grounds of any exceptional operational challenge, such as the size of migratory movements. We would also like to stress that, in accordance with the provisions of international human rights law, irregular entries should not be criminalized: the act of seeking asylum is legal and border crossing without authorization should be considered at most an administrative offence.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any plans of your Excellency’s Government to address immediately 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.
3. Please provide detailed information on any investigations and judicial or other inquiries into the reported death of 19 persons, including two children. Please include information on their current status, the specific investigative steps taken and on compliance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). Please include information on whether the individuals’ bodies were examined by a medical and forensic doctor to determine the cause and circumstances of their death and if so please provide information on the findings. Please also provide information on whether or not their remains have been repatriated to their families according to international human rights standards. If not, please provide information on the current location of the individuals’ remains.
4. Please provide information on the steps taken to effectively search for migrants and asylum seekers reported missing or disappeared at the border and, in the event of their death, to locate, exhume, identify, respect and return to their families the mortal remains. Moreover, please

include information on the existing procedures to guarantee that families of missing or disappeared migrants and asylum seekers can lodge a complaint in this regard and be kept regularly informed on the progress of the investigation and search activities undertaken on the fate and whereabouts of their loved ones.

5. Please provide detailed information on the guarded detention centres for foreigners, in which migrants and asylum seekers are being detained, including conditions of detention and treatment of detainees, and please explain how this is compatible with international human rights obligations. Kindly include information on any plans of your Excellency's Government to address immediately their dire living conditions at these facilities.
6. Please provide information on how existing open facilities and other alternative and less restrictive measures to deprivation of liberty that can be provided to migrants and asylum seekers are being applied to those arriving from Belarus, including persons who entered the territory of Poland 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.
7. Please provide information on measures taken or to be taken by your Excellency's 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.
8. Please indicate what measures have been taken by your Excellency's 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 Poland's obligations under international human rights and refugee laws. These also include measures taken or to be taken to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.
9. Please indicate any consideration to thoroughly review the Act on Foreigners and the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland to address the concerns raised in relation to the detention of families with children and unaccompanied children, as well as to bring the laws in line with relevant standards under international human rights and refugee law, particularly with regard to the rights to liberty, the right to seek asylum, the principle of non-refoulement and the prohibition of collective expulsions.

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 prevent any irreparable harm to the life and personal integrity of the persons concerned, 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.

Please accept, Excellency, 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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government's attention to article 3 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to life, liberty and security of person". In this regard, we reiterate that the obligation to protect the right to life requires States to take special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats or pre-existing patterns of violence, including children, notably unaccompanied migrant children (CCPR/C/GC/36, para. 23)." Article 9 of the UDHR establishes that "no one shall be subjected to arbitrary arrest, detention or exile". Similarly, we would like to recall articles 6 (1), 7 and 9, 10, and 16, read alone and in conjunction with article 2 (3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by Poland on 18 March 1977, that guarantee the inherent right to life of every individual, the prohibition of torture, as well as the right to liberty and security of the person. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

Furthermore, 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". 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 the principle of *non-refoulement* and the prohibition of arbitrary or collective expulsions.

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 characterized 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.

In this regard, we also wish to recall that according to Principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principles) no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country. Furthermore, in

General Comment 36 the Human Rights Committee affirms the duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of the Covenant would be violated (para. 30).

We would also like to draw your attention 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 individualised, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights 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).

Furthermore, the Special Rapporteur recalls that States are required to take all reasonable precautionary steps to protect life and prevent excessive violence, and have committed to cooperate internationally to save lives and prevent migrant deaths and injuries, in accordance with international law. In this regard, delays in searching for and rescuing migrants in distress on land and at sea may amount to torture or ill-treatment and undermine the right to life (para. 44).

In addition, we would like to draw the attention of your Excellency's Government to the report "Unlawful death of refugees and migrants" (A/72/335) by the then Special Rapporteur on extrajudicial, summary or arbitrary executions, which calls on States to address the massive human rights violations against refugees and migrants and related impunity by prioritising the protection of the right to life in their migration and refugee policies. We reiterate that the channeling of migration flows into more dangerous terrain, where migrants are exposed to increased and predictable risk and life-threatening situations, may constitute a violation of States' positive obligations to protect the right to life (para. 10). In addition, the Special Rapporteur noted that deterrence practices and policies can also be enforced through the environment, including "leaving people in a hostile environment without supplies", which may amount to excessive use of force (para. 34). Such practices can deliberately endanger human life and therefore violate the obligation of your Excellency's Government to "take all necessary and possible measures [...] to prevent the loss of human life" (A/RES/63/182, para. 6(a)).

We also wish to draw your Excellency's Government attention to the observation by the Special Rapporteur on extrajudicial, summary or arbitrary executions that "push-back" measures, in addition to violations of the principle of "non-refoulement," may amount to excessive use of force whenever officials place refugees or migrants intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment (A/72/335, para. 33). With regard to States' positive obligations to protect the right to life, the Special Rapporteur also noted that it "is impossible to protect the right to life while simultaneously attempting to deter entry by endangering life" (A/72/335, para. 59). States must take those "measures

within the scope of [its] powers which, judged reasonably, might have been expected to avoid [the] risk” to life.¹

Furthermore, we draw your Excellency’s Government’s attention to the Declaration for the Protection of All Persons from Enforced Disappearance, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall that the Declaration sets out the necessary protection by the State, in particular the rights to a prompt and effective judicial remedy to determine the fate and whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons, including information related to any transfers. Further, the Declaration stipulates that States shall not expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

We also refer to the Working Group on Enforced or Involuntary Disappearances report on enforced disappearances in the context of migration (A/HRC/36/39/Add.2) which outlines a number of relevant recommendations related to: prevention of enforced disappearances of migrants; search for disappeared migrants; investigation, criminalization and prosecution; protection and right to an effective remedy; and international co-operation. Further, we refer to the Guiding principles for the search for disappeared persons (CED/C/7), in particular principle 9, which outlines that the search should take into account the particular vulnerability of migrants.

With regard to the reported difficulties in documenting and monitoring potential violations against migrants due to restrictions on civil society actors’ access to the border area, we would like to recall that States violate normative pillars of international human rights law when they impede the work of persons providing life-saving services to refugees and migrants. In situations where States are unwilling or unable to provide humanitarian relief themselves, they must let others provide such services (A/73/314). By failing to do so, States may put the lives, health and safety of migrants at risk, by denying essential life-saving services (A/HRC/37/34, para. 15).

In relation to the alleged detention of migrants and asylum seekers, we wish 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 UDHR and article 9(1) of the ICCPR.

In addition, we would like to draw your Excellency’s Government’s attention to the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the

¹ European Court of Human Rights, *Osman v. the United Kingdom*, para. 116.

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).

We would also like to bring to the attention of your Excellency’s Government the report on return and reintegration of migrants of the Special Rapporteur on the human rights of migrants (A/HRC/38/4), in which the Special Rapporteur highlights that “experience has shown that detention does not deter irregular migration, nor does it increase the effectiveness of removal procedures; it only increases the suffering of migrants, and may have a long-term detrimental impact on their mental health. Furthermore, detention has no influence on the choice of destination country, nor does it lead to a reduction in the number of irregular arrivals” (para. 40).

On the other hand, 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 wish to stress 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 Poland on 7 June 1991. We would also like to recall the concluding observations to Poland of the Committee on the Rights of the Child (CRC/C/POL/CO/5-6, of 6 December 2021), in which the Committee recommended to “[e]nsure that asylum-seeking children, refugee children, children in situations of migration and families with children are not placed in guarded detention centres” (para. 41, b). We wish to 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.

In connection with the allegations of dire conditions of detention, we wish to refer to 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. We also wish to draw your attention to paragraph 25 of General Comment No. 36 of the Human Rights Committee on article 6 of the ICCPR, on the right to life (CCPR/C/GC/36), which establishes that States parties also have a heightened duty of care to take any necessary measures to protect the lives and bodily integrity of individuals deprived of their liberty by the State, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. This also includes procedures to ensure that law enforcement actions are properly planned consistent with the need to minimize the risk they pose to human life, mandatory reporting, review and investigation of life-threatening incidents (CCPR/C/GC/36, par. 13).

In relation to the reported death of 19 persons, we would like to refer to the aforementioned Principles, in particular principle 9 which indicates that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. These should be conducted in line with the standards set out in the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) and must be geared towards drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (CCPR/C/GC/36). The failure to investigate constitutes in and of itself a violation of the right to life (CCPR/C/21/Rev.1/Add. 13, paras. 15 and 18).

We also wish to highlight that States are required to take all reasonable steps to identify the deceased. Families have the right to participate in investigation, to reparation and to know the truth about the circumstances of death and location of the remains of their family member(s) (A/HRC/21/46, para. 54). When the identity of a deceased person has been determined, States should inform relatives immediately and deliver a notification of death in an accessible manner. Upon completion of investigation procedures, human remains and possessions of the deceased should be returned to family members. States parties should also disclose relevant details about the investigation to the victim's next of kin, afford the next of kin legal standing in the investigation, and make public information about the investigative steps taken and the findings, conclusions and recommendations emanating from the investigation, subject to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals (CCPR/C/GC/36).

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.

We also wish 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 Poland is a party since 26 July 1989. 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. We also recall that whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the CAT imposes an obligation to investigate and to ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment and/or their family receive adequate reparation.

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".