

Warsaw, 28 February 2022

Mr. Felipe González Morales
The UN Special Rapporteur on the
human rights of migrants
Office of the High Commissioner for
Human Rights
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Dear Mr. Morales,

As a response to your call for submissions on examining ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation (paragraph 1 (a), A/HRC/RES/43/6), please find our input concerning Poland.

Helsinki Foundation for Human Rights (HFHR) is one of the oldest non-governmental organisations acting in the field of human rights protection in Poland. HFHR's main areas of activity are: international and national education; strategic litigation; providing legal advice; monitoring the human rights dimension of actions taken by public authorities. HFHR provides legal assistance to refugees and migrants in Poland and monitors Poland's borders since 1992. HFHR is also a member of Grupa Granica (Border Group) - a social movement that opposes how authorities have responded to the events on the Polish-Belarusian border. Grupa Granica assist forced migrants who find themselves on the Polish territory and monitor human rights violations. The movement includes activists from all over Poland, including residents of border areas, and a growing group of NGOs. At present, organisations that cooperate closely within GG include: Nomada Stowarzyszenie, Stowarzyszenie Interwencji Prawnej, Homo Faber, Polskie Forum Migracyjne, Helsińska Fundacja Praw Człowieka, Salam Lab, Dom Otwarty, Centrum Pomocy Prawnej, im. Haliny Nieć, CHLEBEM i SOLĄ, uchodźcy.info, RATS Agency, Kuchnia Konfliktu, Strefa WolnoSłowa and Przystanek „Świetlica” dla dzieci uchodźców.

Human rights violations at international borders: trends, prevention and accountability Poland

1.

Recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals (since May 2021)

Since the end of September 2021, the situation in the Polish- Belarusian border region has been described as a humanitarian crisis. It is associated with the mass migration of people trying to cross the Polish-Belarusian border - who on both sides of the border are exposed to violence by the services and coercion to cross the border illegally beyond legal border crossings.

Regulations of the Ministry of the Interior and Administration (August 13th and 20th 2020)

In August 2021, two amendments of national law have entered into force, affecting the situation at the border. Firstly, the Regulation of 13 August 2021¹, allowed to place twice as many migrants in guarded centers than before. Secondly, the Regulation of 20 August 2021², introduced provisions according to which persons unauthorized to enter Poland are instructed about the obligation to immediately leave the territory of Poland and are returned to the state border line. The Regulation does not provide exceptions for persons seeking international protection which, according to Polish Ombudsman, contradicts the Geneva Convention on the Status of Refugees and the Constitution of the Republic of Poland³.

Amendment of the Act on Foreigners and other acts

Furthermore, on 23 August 2021, a government draft act amending the provisions of the migration law was submitted. Even though the amendments were criticised by civil society organizations⁴, ODIHR⁵ and UNHCR⁶ as violating non-refoulement principle, the changes were introduced by the act of October 14, 2021⁷. It provides for a simplified procedure of returning migrants who have crossed the border of Poland in an unauthorized manner. According to the draft law the foreigner may be returned from Poland even if he/she make application for international protection and without assessing the risk of human rights violation. Appeal against the removal order shall not have suspensive effect. The proposed provision also allows for leaving their applications for international protection without examination.

Apart from the above mentioned changes, the amendment introduced another important change. Under new provisions the application for international protection may be not examined when it was made by the foreigner apprehended immediately after unauthorised crossing of the EU's external border, unless:

- the foreign national arrived directly from a territory in which they were in danger of persecution,
- they provide the credible reasons for the irregular border crossing, and
- they made the application for international protection immediately after crossing the border.

When above mentioned conditions are fulfilled then Office for Foreigners may inform the applicants in written that his/her application will not be examined. In such a situation no decision is given as to the asylum application, there is no right to appeal against such information, the foreigner is no longer treated as applicant for international protection and

¹ Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 13 sierpnia 2021 roku zmieniające rozporządzenie w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców (Dz.U. 2021, poz. 1482): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001482/O/D20211482.pdf>.

² Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 sierpnia 2021 roku zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf>.

³ Wystąpienie generalne do Ministra Spraw Wewnętrznych i Administracji z dnia 25 sierpnia 2021 roku (XI.540.9.2020.AS): <https://bip.brpo.gov.pl/sites/default/files/Wystapienie%20RPO%20do%20MSWiA%2025.08.2021.pdf>.

⁴ https://ocalenie.org.pl/wp-content/uploads/2021/08/zmiany-prawa-migracyjnego_opinia.pdf; <https://interwencjaprawna.pl/projekt-ustawy-ograniczajacy-prawa-uchodzcow-co-jest-nie-tak/>.

⁵ OSCE Office for Democratic Institutions and Human Rights, Urgent opinion on draft amendments to the Aliens Act and the Act on Granting Protection to Aliens on the Territory of the Republic of Poland and Ministerial Regulation on Temporary Suspension of Border Traffic at Certain Border Crossings, 10.09.2021, [https://bip.brpo.gov.pl/sites/default/files/2021-09/Opinia_ODIHR_10.09.2021_\(jez.angielski\).pdf](https://bip.brpo.gov.pl/sites/default/files/2021-09/Opinia_ODIHR_10.09.2021_(jez.angielski).pdf).

⁶ UNHCR, Observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland (UD265), 16.09.2021, <https://www.refworld.org/docid/61434b484.html>.

⁷ Ustawa z dnia 14 października 2021 roku o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw (Dz. U. 2021, poz. 1918): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001918/O/D20211918.pdf>.

he/she loses right to stay in Poland. It is not yet possible to assess how these provision are applied in practice.

2. Information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.

Push-back policy (since 2015)

Since 2015, there have been reports of the Polish Border Guards pursuing a push-back policy on the border with Belarus, primarily at the border crossing in Terespol. According to the testimonies of foreigners present at the border, the majority of asylum-seekers arriving at the border to apply for international protection were being sent back to Belarus, with the number of asylum applications lodged in Poland falling at the same time. This violation of international refugee law, described in detail in the report of the HFHR in 2019⁸, was confirmed by the European Court of Human Rights (hereinafter: ECtHR) in the judgement *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17, 43643/17), which became final on 14 December 2020⁹.

The push back policy was also continued in 2021. However, since the beginning of the crisis on the Polish-Belarusian border in August 2021, it has changed its character and moved from legal border crossings to forests on the border between Poland and Belarus. Since then, the media and non-governmental organizations active in this area have started to document cases of the Polish Border Guard deporting migrants from Poland to Belarus, despite declaring their willingness to apply for asylum in Poland¹⁰. Accurate statistics on the number of push backs are not possible to determine, but during the period of the greatest intensification of the crisis in the period from September to November 2021, the Border Guard reported several hundred "prevented attempts to cross the border daily"¹¹. In the same period, NGOs reported receiving requests for help from several thousand people imprisoned on the Polish-Belarusian border¹². To date, 19 deaths of people trying to cross the Polish-Belarusian one have been confirmed¹³. One of the most publicized cases was the situation of 32 people of Afghan origin trapped on the border near Usnary G6rny in August 2021. They were pushed out of the territory of Poland, despite a clear declaration of applying for international protection, and then imprisoned between the Polish and Belarusian Border Guard¹⁴. *Interim measures* ordered by the ECtHR (case *R.A. and Others v. Poland* (application no. 42120/21) on August 25, and then extended on September 27, ordered Poland to provide the group with assistance, including "adequate food, water, clothing, medical care and, if possible, temporary shelter". However, the Polish authorities did

⁸ https://www.hfhr.pl/wp-content/uploads/2019/06/0207_report-HFHR-en.pdf.

⁹ ECtHR, *M.K. and Others v. Poland*, Application Nos. 40503/17, 42902/17, 43643/17, 23 July 2020, final on 14 December 2020, available at: <http://hudoc.echr.coe.int/eng?i=001-203840>.

¹⁰ Human Rights Watch, "Die Here or Go to Poland". *Belarus' and Poland's Shared Responsibility for Border Abuses*: <https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses>.

¹¹ The statistics were reported daily via Border Guard's official Twitter account: https://twitter.com/Straz_Graniczna.

¹² Grupa Granica, *Humanitarian crisis at the Polish-Belarusian border*, <https://www.grupagranica.pl/files/Grupa-Granica-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf>.

¹³ <https://www.infomigrants.net/en/post/38698/another-migrant-body-found-near-polandbelarus-border>.

¹⁴ See the inquiry conducted by the Amnesty International (report in Polish): <https://amnesty.org.pl/wp-content/uploads/2021/09/Amnesty-International-Sytuacja-w-Usnary-G6rny-Raport-z-wizyty-24082021.pdf>; a legal analysis by the HFHR: <https://www.hfhr.pl/wp-content/uploads/2021/09/Legal-analysis-ENG.pdf>.

not comply with this ECtHR decision. The further fate of the group is unknown, because with the introduction of the state of emergency, the media and non-governmental organizations lost the possibility of entering the area of Usnarz Górny. The Border Guard admitted that on the October 20, 16 out of 32 people from the group made an attempt to cross the Polish-Belarusian border. In a press release, the Polish Border Guard admits that these people were arrested and pushed back to the Belarusian side of the border¹⁵. According to public information, no one has remained on the site since then.

State of emergency (September 2nd 2021)

On September 2, 2021, a state of emergency was introduced in certain parts of the Podlaskie and Lubelskie Voivodeships. The Regulation of the President of the Republic of Poland¹⁶ introduced restrictions with regard to staying in enlisted towns in the immediate vicinity of the border with Belarus. The subsequent regulation of the Council of the Ministers¹⁷ detailed the specific restrictions on movement and monitoring of the areas affected by the state of emergency. The regulation provided for, inter alia, a ban on entry to the state of emergency for non-residents, as well as a ban on recording (e.g. by means of photos) border infrastructure. Journalists and employees of monitoring organizations were not excluded from these restrictions.

Amendment of the Act on the protection of the state border (November 30th 2021)

The state of emergency that introduced the “entry-ban” zone along the whole PL-BY border (on the Polish territory) lasted from September 2 to December 2, 2021. According to the Polish Constitution it is not possible to prolong it beyond 60 days. To bypass such limitations, on November 30, the Polish government adopted new provisions of the act amending the act on the protection of the state border¹⁸. Thus the government chose the way of circumventing the Constitution. The area covered by the extension of the entry ban coincides with the area where the state of emergency was in force until the end of November. It covers in total 183 villages and towns. Additionally, under the new regulations, this area may be extended at any time, and the validity of these regulations may be extended.

Humanitarian organizations, the media, activists and medics are still banned from entering the zone. The new legal rules, which theoretically allow the media to have greater access to the zone (art. 12b par. 2 of the Act on the protection of the state border), in practice resemble organizing propaganda "tours", which can only take place under the full control of officers. We observe with concern the normalization of this type of action, characteristic of authoritarian regimes and countries under dictatorship, where the lack of freedom of expression and the press is the norm. Inability to reliably verify information means breaking the basic principles of democratic countries. The current actions of the authorities encourage the spread of disinformation and create opportunities to manipulate public fear while concealing serious violations of human rights. Additionally, the act provides Border Guard officers with new

¹⁵ <https://www.pap.pl/aktualnosci/news%2C977278%2Cgrupa-migrantow-probowala-forsowac-granice-sg-opublikowala-nagranie.html>.

¹⁶ Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 roku w sprawie wprowadzenia stanu wyjątkowego na obszarze części województwa podlaskiego oraz części województwa lubelskiego (Dz.U. 2021, poz. 1612): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001612/O/D20211612.pdf>.

¹⁷ Rozporządzenie Rady Ministrów z dnia 2 września 2021 roku w sprawie ograniczeń wolności i praw w związku z wprowadzeniem stanu wyjątkowego (Dz. U. 2021, poz. 1613): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001613/O/D20211613.pdf>.

¹⁸ Ustawa z 17 listopada 2021 roku o zmianie ustawy o ochronie granicy państwowej oraz niektórych innych ustaw (Dz. U. 2021, poz. 2191): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210002191/O/D20212191.pdf>.

powers and new means of direct coercion (the officers will also be able to use knapsack blowers of incapacitating substances).

Judgment of the Supreme Court (January 18th 2022)

On January 18, 2022 the Supreme Court of Poland, in a so-called 'landmark judgment'¹⁹, ruled that the deprivation of the possibility of staying in the entire territory of the zone, which covers almost all persons who do not live there, is in breach with the Polish Constitution and means an unauthorized restriction of civil rights. Thus, such limitation should be considered illegal and no one can be punished for breaking this prohibition. The Supreme Court further states that it is also illegal to restrict the activities of the Polish Red Cross by prohibiting it from providing humanitarian aid in any part of the territory of the Republic of Poland.

The sentence concerned three journalists working for the German-French TV ARTE and the French press agency AFP. They were detained in September: three people were handcuffed, detained overnight at the police station, and then brought to the court in Sokółka in connection with the suspicion of being in the area under the state of emergency. During the intervention, their equipment, documents and telephones were taken from them. Over the last 5 months, we have received a lot of information about attempts to obstruct work and the use of violence against individual journalists and journalists performing their professional duties in the border area. We emphasize once again that the policy of keeping the media out of the state of emergency area results in a situation in which the public only receives materials containing messages controlled by the Belarusian services or the Polish government.

Act on building state border security (October 29th 2022)

On October 29, 2021, the Act on the construction of state border security²⁰ was passed, assuming the construction of a wall on the Polish-Belarusian border that would prevent irregular migration through illegal border crossings. Already in October 2021, the Commissioner for Human Rights of Poland indicated that the so-called special act on the construction of a border wall is partially unconstitutional and assumes that "this investment will not be subject to laws protecting such constitutional values as the right to safe working conditions, protection of life and health, environmental protection and the right to information about it"²¹. Moreover, due to the omission of the environmental impact assessment, the construction of the wall will violate EU environmental regulations.

The construction of the wall along the Polish-Belarusian border, on the Polish side, started on January 25, 2022 and is supposed to take at least several months. The wall is supposed to be made of steel and topped with razor wire. Construction of the wall would affect and threaten not only the forced migrants who flee from violence, wars, persecution, poverty and oppression. It would also affect the local villages, towns and inhabitants. It would also imply cutting trees within the protected areas, operating heavy equipment, air and noise pollution and irreversible damage to the natural and protected areas and habitats, including the precious Białowieża Natural Forest (UNESCO heritage site), Natura 2000 areas and it would block the eco-corridors of protected species of animals.

¹⁹ Wyrok Sądu Najwyższego z dnia 18 stycznia 2022 r. (sygn. I KK 171/21).

²⁰ Ustawa z dnia 29 października 2021 roku o budowie zabezpieczenia granicy państwowej (Dz.U. 2021, poz. 1992): <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001992/O/D20211992.pdf>.

²¹ Wystąpienie generalne do Marszałka Senatu RP z dnia 20 października 2021 roku (IV.7000.366.2021.ST): [https://bip.brpo.gov.pl/sites/default/files/2021-10/Do Marszałka Senatu zabezpieczenie granicy 20.10.2021.pdf](https://bip.brpo.gov.pl/sites/default/files/2021-10/Do%20Marszalka%20Senatu%20zabezpieczenie%20granicy%2020.10.2021.pdf).

In January, 2022, as a result of a thorough inspection The Supreme Audit Office as a result of an ad hoc inspection prepared an opinion²², in which it points to the implementation of this out of law "investment" and the risk of irreversible damage to the environment (including the Białowieża Forest) if the construction is completed.

3. Information on how the "safe third country" concept is applied and if there is any "safe third country" list in Poland with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.

Poland has not introduced a list of "safe third countries" into its legal system. The idea of introducing such a list was widely discussed in 2019, when the Ministry of the Interior and Administration proposed changes to the act on granting protection to foreigners within the territory of the Republic of Poland. The proposed changes included the introduction of lists of "safe third countries" and "safe countries of origin", but were not introduced.

Poland is a party to one bilateral readmission agreement - with the Republic of Kazakhstan (2016)²³. Moreover, Poland is a party to multilateral readmission agreements concluded by the European Union with some third countries: Albania²⁴, Armenia²⁵, Azerbaijan²⁶, Belarus²⁷, Bosnia and Herzegovina²⁸, Cape Verde²⁹, Georgia³⁰, Hong Kong³¹, Macao³², Moldova³³, Montenegro³⁴, North Macedonia (at time: former Yugoslavian Republic of Macedonia)³⁵, Pakistan³⁶, Russian Federation³⁷, Serbia³⁸, Sri Lanka³⁹, Turkey⁴⁰ and Ukraine⁴¹.

As of February 28, 2022, the Polish Border Guard does not return to the following countries: Syria, Eritrea, Venezuela, Afghanistan, and Palestine.

The amendment to the Act on Foreigners and other Acts, described in detail in point 1 of this letter, remains closely related to the concept of a "safe third country". The provisions on leaving the application for protection without examination and the possibility of issuing a decision to

²² <https://next.gazeta.pl/next/7,151003,28026507,tak-rzad-buduje-mur-na-granicy-za-1-6-mld-zl-dotarlismy-do.html>.

²³ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001623/O/D20171623.pdf>.

²⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517\(02\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517(02)&from=PL).

²⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1031\(02\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1031(02)&from=PL).

²⁶ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22014A0430\(01\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22014A0430(01)&from=PL).

²⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22020A0609\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22020A0609(01)&from=EN).

²⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219\(04\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(04)&from=PL).

²⁹ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1024\(02\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22013A1024(02)&from=PL).

³⁰ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22011A0225\(03\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22011A0225(03)&from=PL).

³¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0124\(01\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0124(01)&from=PL).

³² [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0430\(01\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0430(01)&from=PL).

³³ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219\(10\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(10)&from=PL).

³⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219\(02\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(02)&from=PL).

³⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219\(01\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(01)&from=PL).

³⁶ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22010A1104\(02\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22010A1104(02)&from=PL).

³⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A0517\(03\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A0517(03)&from=PL).

³⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219\(03\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(03)&from=PL).

³⁹ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517\(03\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517(03)&from=PL).

⁴⁰ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517\(03\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22005A0517(03)&from=PL).

⁴¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1218\(01\)&from=PL](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1218(01)&from=PL).

leave the territory of Poland, refer to the fact that the foreign national concerned could have lodged an application for international protection in a "safe third country". However, to invoke the concept of a safe third country, which is one of the grounds provided for by EU law (Directive 2013/32/EU) for treating the application as inadmissible and leaving the application not examined, it is not sufficient to simply make a general reference to the alleged circumstance that the foreign national was not at risk there, but requires the cumulative fulfilment of additional conditions, among other things, demonstrating the existence of a connection between the applicant and the third country concerned, on the basis of which it would be reasonable for that person to go to that country.

It is also worth mentioning that during the humanitarian crisis on the Polish-Belarusian border described above, Belarus was de facto recognized by representatives of the Polish authorities as a safe third country. However, Belarus cannot be considered a safe country for asylum-seekers. According to the media articles and reports Belarussian officers use force to push migrants to Poland⁴². Moreover, Belarus has no effective asylum system (see e.g. the ECtHR judgement *M.K. and Others v. Poland*, § 178). The Court has found that returning asylum-seekers to Belarus could put them at risk of "chain-refoulement" and treatment prohibited by Article 3 of the Convention. According to the report of the Committee Against Torture, Belarus engages in forced expulsion, deportation, returns and extradition to third countries in which there are substantial grounds to believe that an individual would be in danger of being subjected to torture (concluding observations on the fifth periodic report of Belarus, CAT/C/BLR/5, para. 52).

4. Information on any progress made in developing independent border monitoring mechanism(s) at the national level.

In Poland, there is no independent border monitoring mechanism at the national level, the activities of which would be recognized and sanctioned by the state authorities. A unique institution in this context is the Commissioner for Human Rights, who, as part of his general activity, but also as a National Mechanism for the Prevention of Torture, makes periodic visits, among others, at Border Guard posts or at border crossings⁴³.

As far as independent, social initiatives to monitor the situation at the border are concerned, it should be emphasized that their ability to act is limited or even prevented by the limitations of the possibility of staying in the border areas described in point 2, resulting first from the introduction of a state of emergency, and then from changes in the Act on the Protection of State Borders. To such a limited extent, monitoring and research on the situation at the border is carried out by aid organizations that provide help to migrants crossing the Polish-Belarusian border. In December 2021, the Grupa Granica, a social movement linking non-governmental organizations (including the Helsinki Foundation for Human Rights), independent activists and committed residents of border areas, published a report on the humanitarian crisis on the Polish-Belarusian border, prepared on the basis of the information it had collected in connection with its main activity⁴⁴.

⁴² Cfr. above-mentioned reports by the Human Rights Watch and Grupa Granica.

⁴³ <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-ad-hoc-w-placowkach-strazy-granicznej-w-bobrownikach-krynkach-oraz-w-narewce>; <https://bip.brpo.gov.pl/pl/content/rpo-premier-raport-wizytacje-granica>.

⁴⁴ Grupa Granica, *Humanitarian crisis at the Polish-Belarusian border*, <https://www.grupagranica.pl/files/Grupa-Granica-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf>.