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Universal Periodic Review of Poland – 4th cycle

Third-party joint submission by:

Association for Legal Intervention (Poland)
Lambda Warsaw (Poland)
Birmingham City University (United Kingdom)
Global Detention Project

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Introduction & Context

This submission focuses on human rights concerns relating to Poland's treatment of migrants, refugees, and people seeking asylum, including its use of immigration detention. This submission is made taking into account the millions of refugees who have crossed into Poland since the Russian Federation's invasion of Ukraine, as well concerns about Poland's treatment of migrants and asylum seekers entering the country along its border with Belarus since mid-2021.

1. Migrant Workers

1) State of the implementation of key recommendations

Recommendation	From	Response	Status
120.8.-11. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Many states	Supported	Not implemented
120.175. Continue to make efforts to protect migrant workers from all forms of exploitation and abuse, in particular those from the Democratic People's Republic of Korea, by improving their working condition in accordance with relevant international standards	Republic of Korea	Supported	Not implemented

2) Poland has still not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

3) The proceedings to legalize work and stay of migrant workers are faulty and burdensome. Often it takes months or even years to be granted a work and temporary stay permit. Meanwhile, some migrants cannot work while they wait for a work permit to be issued. Increasingly protracted procedures have been a matter of great concern in recent years.¹ The only response of Polish authorities was to prolong the time limits for making decisions in residence permits proceedings.²

4) Migrant workers profoundly depend on their employers. Work permits are issued for a specified job in a specified workplace for a specified remuneration, so a migrant worker cannot change jobs or even be promoted without a new permit being issued. Moreover, migrant workers' stay in Poland is closely intertwined with their work; thus, being dismissed from work, they may also lose their right to stay in Poland. In case of dismissal, the work and temporary stay permit is revoked unless a migrant finds a new job in 30 days. The close connection between work and stay strengthens the more advantageous position of employers in comparison with migrant workers. In consequence, the latter find it difficult to assert their rights in the event of exploitation or abuse.³

5) Migrant workers who suffered exploitation or abuse in Poland are not sufficiently assisted. No state support is offered to them. National Labour Inspectorate is an authority that investigates the legality of migrants' work and punishes them for working without needed documents rather than offering support in the event of exploitation or abuse.⁴

6) **RECOMMENDATIONS**

- **Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;**
- **Facilitate and accelerate proceedings connected with migrants' work and stay;**
- **Introduce an effective system of state protection against exploitation and abuse of migrant workers, *inter alia* by loosening the relation between migrants' work and their stay in Poland.**

2. Discrimination

7) **State of the implementation of key recommendations**

Recommendation	From	Response	Status
120.41 Prevent and combat all forms of discrimination.	Philippines	Supported	Not implemented
120.44. Amend its anti-discrimination law in order to ensure that discrimination on any grounds is prohibited in all areas of life.	Finland	Supported	Not implemented
120.45. Take steps to ensure the acceptance and the general public knowledge of the existing law on anti-discrimination and to increase the practical use of the law	Sweden	Supported	Not implemented
120.173. Take urgent measures to investigate and sanction acts of discrimination against migrants, refugees and minorities, in particular by ensuring the protection necessary to those who report acts of discrimination	Argentina	Supported	Not implemented

8) Third-country nationals are insufficiently protected against discrimination.

9) Many migrant workers report being discriminated in their workplace,⁵ but they are unwilling to seek protection against discriminatory practices as they are afraid of being dismissed and, consequently,

losing their right to stay in Poland (para. 4). In particular, when they receive a lower remuneration than the one stated in a work permit, they may be considered to work illegally in Poland.⁶

10) Accommodation-related discrimination of third-country nationals, resulting from the growing aversion against foreigners incited by prominent politicians, is not being combated or remedied by Polish authorities. Finding an affordable flat in the market is difficult and social flats are hardly accessible, so many international protection beneficiaries are at risk of homelessness.⁷

11) Information about rights and obligations in residence permits proceedings is available only in a few languages. Thus, migrants who do not know those languages have no equal access to migration-related state services.⁸

12) Polish regulation implementing EU law on equal treatment⁹ is rarely used in practice (only several cases in years 2012-2019¹⁰). The law is insufficient and imprecise, e.g., it does not define intersectional/cumulative and associative discrimination.¹¹

13) **RECOMMENDATIONS**

Amend its law in order to ensure that protection against discrimination in Poland is effective, sufficient and adequate.

3. Hate Crimes

A. Hate crime and its consequences

14) Hate crimes are widespread in Poland. Multiple studies confirm that people identified as, or associated with, migrants, religious minorities, LGBTI and other vulnerable and stigmatised groups are at a higher risk of violence compared with general population. This section presents the nature of hate crime in Poland.

15) In 2018, the Polish Commissioner for Human Rights (the National Human Rights Institution and Equality Body) and Ipsos published a study which found high levels of hate victimisation among selected minority groups in Poland, i.e., Ukrainians, people of African descent and Muslims. According to the report, 43% people from sub-Saharan Africa, 18.5% of Ukrainians and 8% of Muslims experienced a crime motivated by prejudice. Among respondents from sub-Saharan Africa, 17% said they had experienced a physical attack.¹²

16) The *EU LGBTI Survey*, published by the Fundamental Rights Agency in 2020, found that 15% of respondents from Poland experienced physical or sexual attacks due to being LGBTI in the past 5 years.¹³

17) According to the survey published by Campaign Against Homophobia (KPH) and Lambda Warsaw in 2021, 98% of LGBTQ+ people in Poland experienced some type of microaggression in 2019-2020. Almost 70% of respondents experienced at least one type of violent behaviour due to their sexual orientation or gender identity in 2019-2020.¹⁴

18) An increasing number of hate crimes are committed on the internet, often following incendiary, anti-LGBTI or anti-migrant publications and TV broadcasts. For example, in 2021, the LGBTI human rights advocate Bart Staszewski reported having received verbal abuse and death threats following negative broadcasts about his work in the government-run TV station TVP.¹⁵

- 19) Hate crimes often have a particularly severe impact compared with other, non-bias motivated crimes. According to the Polish Commissioner for Human Rights, many victims experience symptoms of post-traumatic stress disorder, change their behaviour and avoid certain locations to prevent re-victimisation.¹⁶ For example, Ukrainians avoid speaking in their native tongue while Black people attempt to conceal their skin colour under clothing.¹⁷
- 20) Despite the scale of victimisation evidenced by surveys, few victims come forward to report hate crime. According to the Polish Commissioner for Human Rights, only 5% of hate crimes are reported to the police.¹⁸

B. Official responses to hate crime in Poland

- 21) Fight against hate crime was a key issues in the area of racial discrimination, sexual orientation and gender identity considered during previous UPR of Poland. Poland received more than 16 recommendations on this topic, including from Belgium, Brazil, Bulgaria, Canada, Chile, Egypt, Iceland, Indonesia, Iran, Ireland, Israel, Kyrgyzstan, Norway, the United Kingdom and the United States. Almost all of these have been accepted, but none implemented.

22) State of implementation of key recommendations

Recommendation	From	Response	Status
Strengthen the legal framework and implement measures to combat racism and xenophobia and sanction hate crimes, in particular those against migrants in irregular situations (120.68)	Chile	Supported	Not implemented
Amend the Penal Code to provide that crimes motivated by discrimination on any grounds, including disability, gender identity and expression and sexual orientation, are included in the Code and therefore can be investigated and prosecuted as hate crimes (120.47)	Norway	Supported	Not implemented
Give the appropriate training to the Polish police and other public bodies responsible for victim support services to assist the victims of hate crimes (120.63)	Ireland	Supported	Not implemented
Adopt a comprehensive national action plan against racism and adopt clear measures to combat effectively racially motivated violence (120.61)	Botswana	Supported	Not implemented
Take measures to reduce the number of crimes committed based on xenophobia and racial intolerance (120.54)	Russian Federation	Supported	Not implemented

- 23) A key issue discussed during last two UPR cycles was the need to strengthen the legal framework on hate crime to ensure effective investigation, prosecution and sentencing of crimes motivated by prejudice against groups such as migrants, refugees, LGBTI and disabled people.
- 24) Despite supporting these recommendations, Poland has not amended the Criminal Code. As a result, there are continued serious gaps in the protection against hate crime afforded to different groups.
- 25) The Criminal Code contains substantive provisions that cover hate speech, threats and violence based on national, ethnic, or racial origin or religious beliefs. However, there is no general requirement to harden sentences if a racist, xenophobic or other discriminatory motivation of a crime is detected. Thus, it is difficult or impossible to qualify offences such as criminal damage, arson or murder as hate crime and ensure that the penalty properly reflects the discriminatory nature of the offence. For example, malicious damaging of someone's hearing or mobility aids, a type of disablist hate crime documented by the Polish Human Rights Commissioner,¹⁹ is treated as common crime in Poland and the bias motivation is legally irrelevant.

- 26) In 2019, Parliament passed an amendment to the Criminal Code, prepared by the government, which recognised the perpetration of a violent crime motivated by hatred because of the victim's national, ethnic, racial, political or religious affiliation as an aggravating circumstance. The act was deemed unconstitutional by the Constitutional Tribunal in 2020, for reasons unrelated to hate crime.²⁰ There has been no attempt to improve hate crime legislation ever since.
- 27) While some police officers and prosecutors have received training on hate crime, police are often reluctant to investigate racist undertones of an attack if another motivation (e.g., financial or “fight over a girl”) is also present, or if the victim is drunk or fights back.
- 28) In a recent example, a 19-year-old South Sudanese man was beaten to unconsciousness at a disco in Poznań by a group of men, resulting in a week-long hospitalisation. Following the initial investigation, which resulted in apprehending three offenders, the police spokesperson tweeted that “there are, however, doubts about the behaviour of the victim.”²¹ As of 27 September 2021, police were conducting an investigation into “a fight between two parties, not an attack on the footballer.”²² According to the victim’s lawyer, the statements made by the police led to media and internet users “impermissibly relativising the guilt of the perpetrators of the drastic assault,” which, according to the lawyer, was racially motivated.²³ Some commentators framed the assault as a “conflict about a girl” and accused the victim of being a “pick-up artist, aggressive brawler and perjurer,”²⁴ ignoring the possible racial aggravation of the attack.
- 29) Racially-motivated crimes are on the rise in Poland. However, they are often not officially reported due to a language barrier, lack of legal knowledge and general distrust of police. The latter tends to refuse to accept crime reports from foreigners or ignores the racial motive of a crime. With regard to racially-motivated crimes mentioned in the Criminal Code, judgments are sparsely delivered and the perpetrators are rarely sentenced to imprisonment (if they are, the prison sentence seldom exceeds one year).²⁵
- 30) Hate crimes against LGBTI and disabled people are not recognised as hate crimes in the Polish law. Neither the existing Criminal Code provisions nor any other regulations require that hate crimes motivated by bias against the victim’s sexual orientation, gender identity, gender or disability should attract higher penalties.
- 31) Hate crimes against LGBTI and disabled people are prosecuted and sentenced using provisions for common crimes, some of which require that the victim make a private criminal accusation. Practice shows that this constitutes a real barrier in accessing justice for victims, who often feel that the administrative burdens outweigh the benefits of reporting.²⁶ To rectify this, all hate crimes should be prosecuted *ex officio*.
- 32) There is no requirement for police and prosecutors to establish whether the perpetrators of crimes had any discriminatory motives or for judges to consider the homophobic, transphobic or disablist bias at the sentencing stage. The government has not put in place any specific measures to ensure that the existing law is effectively used in a way that would allow for the bias motivation based on sexual orientation, gender identity, gender or disability to be appropriately recognised and reflected in the sentence. As a result, the bias motivation of the perpetrators is overlooked at various stages

of the criminal justice process, from the first contacts with the police to the justifications of court judgments (even if they are convictions).²⁷

- 33) During the 2nd and 3rd UPR cycles in 2012 and 2017, Poland accepted recommendations from the Human Rights Council to amend the Criminal Code by recognising sexual orientation and other protected grounds in hate crime laws. Similar recommendations were repeatedly made by multiple international human rights bodies, including the UN Committee Against Torture (first in 2007),²⁸ the UN Human Rights Committee (first in 2010),²⁹ and ECRI (2015).³⁰

34) **RECOMMENDATIONS**

Amend the Criminal Code to ensure that all hate crimes are prosecuted *ex officio* and that the motivation of a crime based on the victim's national, ethnic, racial, political or religious affiliation, or the victim's sexual orientation, gender identity, gender or disability, is treated as an aggravating circumstance.

- 35) There are no state-funded victim support services with training and experience to help hate crime victims.
- 36) Victims of hate crime often describe negative experiences when dealing with the police, which leads to low level of reporting of hate crime. In one survey from 2016, most victims said they were unhappy with how they were received by the police and how the police dealt with their case.³¹
- 37) Despite international recommendations to do so, the government does not conduct outreach campaigns to encourage victims to report hate crimes. The numbers of crimes motivated by bias against LGBTI people is negligible. Police have never recorded a case of disablist or gender-based hate crime, despite technical ability to flag such offences in IT systems. More efforts are needed to increase the number of cases that are captured by the police.
- 38) The government does not have any published action plans to reduce hate crime, increase reporting and improve prosecutions.

39) **RECOMMENDATIONS**

Adopt and implement a government hate crime action plan, conduct outreach campaigns to encourage victims to report hate crimes, and give appropriate training to the police and other public bodies responsible for taking reports and providing victim support services to assist the victims of hate crimes.

4. Protection and Integration of Vulnerable Third-Country Nationals

40) **State of the implementation of key recommendations**

Recommendation	From	Response	Status
120.157. Strengthen the protection of migrant women from gender-based	Islamic Republic of Iran	Supported	Not implemented

violence.			
120.171 Adopt concrete measures to strengthen the protection of migrants, refugees and asylum seekers.	Guatemala	Supported	Not implemented
120.177. Increase attention to the integration process for refugees.	Islamic Republic of Iran	Supported	Not implemented

- 41) Migrant women staying in Poland are not sufficiently protected against gender-based violence.
- 42) Polish migration law does not support all migrant victims of violence. A woman who had been granted a divorce or separation may be allowed to stay temporarily in Poland. That residence permit is not available to women in informal relationships or women who have left the perpetrator of violence, but have not regulated their family situation yet. Thus, some women who stayed in Poland as family members of the perpetrator, may find themselves in an irregular situation after fleeing domestic violence.³²
- 43) The risk of gender-based violence upon removal is not sufficiently considered within asylum proceedings. Firstly, some Polish authorities oppose the fact that women may constitute a ‘particular social group’ within the meaning of the 1951 Refugee Convention.³³ Secondly, the women’s claims about the risk upon return and the past violence are often considered lacking credibility. Thirdly, Polish authorities tend to insist on proving by the victim that protection against violence was sought in the country of origin and apply incorrectly the internal relocation alternative. In consequence, gender-based violence victims rarely succeed in asylum proceedings.³⁴ A similarly restrictive approach is taken in return proceedings where humanitarian stay due to a risk of ill-treatment upon return may be granted.³⁵
- 44) Due to a faulty identification mechanism and the unfavorable national practice, victims of gender-based violence are detained in the guarded centres for foreigners pending asylum and return proceedings.³⁶ In the ECtHR case of *A.A. v. Poland*, the Polish government admitted that the applicant – a rape survivor – was detained for months in breach of Article 5(1)(f) and (4) of the ECHR.³⁷
- 45) Migrant women struggle to access crisis intervention. The number of specialized centres designed for all domestic violence victims is insufficient; thus, migrant women often must rely on social welfare institutions. However, this support is not available to asylum seekers, visa holders, undocumented migrants, beneficiaries of humanitarian or tolerated stay. Moreover, special needs of migrant women-victims of violence are not recognized in practice.³⁸
- 46) Financial allowance granted to asylum seekers to cover the costs of living outside reception centers is insufficient to meet their basic needs, which can lead to extreme poverty or even threaten their lives.³⁹ Asylum seekers are not allowed to work in Poland (unless asylum proceedings last longer than 6 months). Thus, the above-mentioned financial allowance, that is grossly inadequate considering costs of living in Poland, is often their sole income.
- 47) A one-year Individual Integration Program for recognized refugees and beneficiaries of subsidiary protection is insufficient to effectively support integration process - it is too short and is not tailored to individual needs of its recipients.⁴⁰ Furthermore, the program does not apply to humanitarian stay holders who are also involuntary migrants.⁴¹

48) **RECOMMENDATIONS**

- Increase the protection of migrant women against gender-based violence by: guaranteeing their legal stay in Poland; recognizing women as members of a particular social group within the meaning of the 1951 Refugee Convention; refraining from detaining victims of violence pending asylum and return proceedings; and ensuring their effective access to crisis intervention;
- Increase the amount of financial allowance for asylum seekers so as it ensures a dignified and adequate standard of living;
- Strengthen and ensure access to integration programs for all beneficiaries of international protection, and expand its personal scope by including humanitarian stay holders.

5. Situation of Migrants in Irregular Situations

49) State of the implementation of key recommendations

Recommendation	From	Response	Status
120.174. Guarantee the appropriate treatment of migrants in irregular situations and waiting for deportation from the country, including access to legal remedies.	Russian Federation	Supported	Not implemented
120.176. Guarantee basic services to the children of migrants in irregular situations, in particular in the areas of education and health.	Uruguay	Supported	Not implemented

50) Procedural guarantees in return proceedings are insufficient.

51) In return proceedings, decisions are often issued without a rigorous examination of the general situation in the migrant's country of origin and their individual situation. It is particularly apparent in cases concerning children who already integrated with the Polish society and whose deportation would threaten their psychophysical state. First-instance authorities do not sufficiently scrutinize *proprio motu* whether the return would violate children's rights and tend to ignore submitted evidence in that regard.⁴²

52) Returnees have no access to free-of-charge legal assistance in administrative return proceedings. Only before a court, they can request legal aid, but at that time no new evidence can be gathered. It hampers the availability and effectiveness of remedies in return proceedings. For instance, in 2020, appeals were made against less than 10% of the first-instance return decisions. While in 2019 they were accepted in 17% cases, in 2020 the success rate has dropped to 9%.⁴³

53) In principle, the first appeal in return proceedings (submitted to administrative authorities) entails an automatic suspensive effect, but in further – court – proceedings suspending the return must

be requested. A returnee's request is non-suspensive, leaving them without any protection against removal before the court decides on the request.

54) Migrants considered as a security threat have even fewer procedural rights. None of the remedies available to them entails an automatic suspensive effect. The suspension of return may be requested though. However, in the cases of suspected terrorists and spies, the court's competence to suspend a removal is opposed. Moreover, case files concerning migrants deemed a security threat are most often classified and only Polish authorities can access them in full. Decisions on return also contain no reasoning regarding the reasons of why a migrant is considered to pose a threat.⁴⁴ Accordingly, the right to an effective remedy is not respected in those cases.

55) By law, all children staying – also irregularly – in Poland have a constitutional right to education. However, in practice, obstacles in accessing education remain.⁴⁵ In particular, minors detained do not have sufficient access to education. The didactic and educational activities in the guarded centres do not cover a minimal scope of the compulsory curriculum.⁴⁶

56) By law, no one – including migrants in irregular situations – can be denied emergency health care. However, irregular migrants are most often not covered by the public health insurance; thus, they must pay all medical expenses themselves. No separate rules have been established for children. Even though detention of a minor (pending return proceedings) may considerably affect their mental health, access to a psychological treatment in the guarded centres is insufficient. Moreover, Polish authorities unwillingly release foreigners (even children) from detention due to their mental health problems.⁴⁷

57) **RECOMMENDATIONS**

- **Ensure respect for the right to an effective remedy and provide for legal aid in return proceedings as well as guarantee the effective monitoring of return operations;**
- **Guarantee effective access to education and health care to all migrants in irregular situations, including detained children.**

6. Principle of Non-Refoulement

58) **State of the implementation of key recommendations**

Recommendation	From	Response	Status
120.179. Consider issues related to the access of asylum seekers, taking into account obligations under the international treaties.	Belarus	Supported	Not implemented
120.180. Take measures towards respecting fully the principle of nonrefoulement when it comes to a foreigner's refugee status.	Greece	Supported	Not implemented

59) The principle of non-refoulement is not fully respected in Poland.

60) Asylum seekers have long been denied access to Polish territory and their asylum applications have not been accepted. At border crossing points (in particular in Terespol and Medyka), asylum seekers recurrently received decisions on a refusal of entry and were immediately sent back to Belarus or Ukraine. Foreigners often had to ask for international protection for many days, approaching Polish authorities several or even several dozen times, before they were admitted to the Polish territory. Upon arrival in Poland, they were often instantly detained due to multiple earlier attempts to cross a border without needed documents.⁴⁸ The ECtHR has reproached Poland for those practices in two recent cases, finding, *inter alia*, that Article 3 ECHR has been violated on account of the applicants being denied access to the asylum procedure and exposed to a risk of inhuman and degrading treatment and torture in Chechnya and Syria.⁴⁹

61) In August 2021, the situation at the border deteriorated. Numerous asylum seekers and migrants who tried to cross the Polish-Belarusian border were repeatedly forced to enter Poland by Belarussian officers and immediately pushed back by Polish authorities. Brutality was reported, but Polish authorities refused to conduct a proper investigation. Moreover, asylum claims were intentionally ignored by Polish officers. In consequence, some foreigners were stranded at the border for days, weeks or even months, without an appropriate access to water, food, shelter, and medical care. Some families were separated. Winter conditions and the announcement of the emergency state, that excluded media, NGOs and medical staff from the area surrounding the border, only aggravated the ongoing humanitarian crisis.⁵⁰ At least 21 persons died.⁵¹ The crisis continues until today, the inhuman treatment of asylum seekers and the lack of respect for the principle of non-refoulement at the Polish-Belarusian border is being challenged before the ECtHR.⁵²

62) Starting with the *R.A. and Others v. Poland* case, concerning 32 foreigners that were stuck between two countries, in Usnarz Górny, from August to at least October 2021, the ECtHR granted interim measures in total in 48 cases, ordering Poland to provide the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter. In some cases, it was also indicated that applicants should not be removed from Poland or that they should have access to a lawyer.⁵³ Some of those court's orders were not observed.

63) Polish government tried to justify push-backs by introducing amendments to Polish law that disrespect the principle of non-refoulement. Since August 2021, a person who was disclosed after irregularly crossing the border must be returned to that border. No effective remedies are available in case of such an immediate removal. In those circumstances, since October 2021, Polish Border Guard can issue a decision ordering a foreigner to leave Poland. A person concerned is immediately forced to depart from Polish territory. Return proceedings are not initiated. Moreover, if the foreigner who entered Poland irregularly applies for international protection, that application may not be considered at all, unless the foreigner entered Poland directly from a territory where their rights could be violated, they convincingly justified illegal entry and applied for asylum at once upon arrival in Poland.

64) Detained foreigners, against the law, must wait even several weeks to apply for international protection. It prolongs their detention and negatively affects the assessment of their asylum claims. They do not have an effective access to asylum procedure.⁵⁴

65) Within the EU, one of the lowest recognition rates in asylum proceedings is reported in Poland. Persons seeking protection, in particular due to sexual orientation, gender-based violence, religion, as well as torture victims and persons originating from Tajikistan and Russia, struggle to have their protection needs assessed properly. Areas of concern with regard to asylum proceedings include: the quality of translation during interviews, conducting interviews online, no (other than written) recording

of interviews, not commissioning expert opinions when needed, ignoring evidence presented by asylum seekers and insufficient legal aid. The rigorous scrutiny is often lacking. Moreover, the length of asylum proceedings in Poland is excessive. Many asylum seekers must wait for a decision for more than 15 months, sometimes even more – in violation of national time-limits.⁵⁵

66) **RECOMMENDATIONS**

Respect the principle of non-refoulement in law and practice, in particular by ceasing push-backs at the Polish border; immediately initiating asylum proceedings upon asylum seekers' request; allowing media and NGOs to enter the border area; conducting a criminal investigation into cases of the officers' brutality at the border; repealing national legislation disrespecting the principle of non-refoulement and ensuring a rigorous scrutiny in asylum proceedings.

7. Immigration Detention

67) **State of the implementation of key recommendations**

Recommendation	From	Response	Status
120.181. Prepare a draft amendment to the Foreigners Act prohibiting the detention of families with minors and unaccompanied minors for the purposes of return and asylum proceedings.	Kyrgyzstan	Supported/noted	Not implemented
120.182. Take urgent measures in order that asylum-seeking children are not deprived of their liberty.	Argentina	Noted	Not implemented

68) Children continue to be detained in Poland. In 2020, 101 children (including 22 unaccompanied) were placed in the guarded centres for foreigners; in 2021 the number rose to 567 (81 unaccompanied).⁵⁶

69) Polish law still allows for a deprivation of liberty of all accompanied minors (pending asylum and return proceedings) and unaccompanied minors above 15 years old (pending return proceedings). By law, asylum-seeking unaccompanied minors should not be detained, but in practice they are placed in guarded centres, in particular when their age is contested by Polish authorities or when they applied for asylum while staying in detention as irregular migrants.⁵⁷

70) In practice, children are deprived of liberty automatically, absent a rigorous scrutiny of their individual situation and needs, or of the psychophysical consequences of detention. In the operative part of the courts' decisions, accompanied minors are sometimes not even mentioned. Child's best interest is often not taken into account. It is also not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied. Moreover,

children are not being detained for as short a period as possible. Cases of detention of accompanied and unaccompanied minors lasting several months or even over a year are often reported.⁵⁸

71) The conditions in guarded centres where minors are placed are not suitable. In 2021, the situation deteriorated as additional buildings were adapted for immigration detention purposes, but conditions – according to the Polish Ombudsman and NGOs - breach international human rights standards. In particular, providing for only 2 m² per detainee. Despite that, unaccompanied minors are placed in containers without appropriate access to sanitary facilities and having grossly limited personal space.⁵⁹

72) Children placed in guarded centres do not have sufficient access to education (see para. 56).

73) Poland has been repeatedly reproached by the ECtHR for detaining families with children in guarded centres without a rigorous examination of alternative measures or the best interest of a child. Poland was found to have violated Article 5 and 8 ECHR in four recent immigration detention cases.⁶⁰ Moreover, in a case concerning detention for almost a year of an accompanied minor, whose psychological state worsened while in detention, Poland has settled with the applicants before the ECtHR.⁶¹ In 2021, for the first time, a case concerning immigration detention of children has been communicated to Polish government by the Human Rights Committee.⁶² Poland still has not ratified the Optional Protocol to the Convention on the Rights of the Child on the communications procedure.

74) Adults detained pending asylum and return proceedings in Poland are subject to similar human rights violations as children. Limiting personal space of detainees to 2 m² is contrary to well-established human rights standards. Detained adults are placed in containers in inappropriate conditions or in schools' gyms, *inter alia*, without any privacy. They struggle to access health care, even in the event of pregnancy or bone fractures. Psychological assistance is insufficient: only one or two psychologists work in guarded centres hosting hundreds of migrant detainees. Moreover, psychologists are often Border Guards' officers, making them untrustworthy for detainees. Access to guarded centres for external psychologists is hindered. While the law prohibits detaining victims of violence, in practice they are regularly placed in the guarded centres (see also para. 44). The identification mechanism applied by the Border Guard is ineffective, resulting in many instances of unlawful detention of victims of violence.⁶³

75) Since the start of Russia's war in Ukraine, there have been numerous reports about the discriminatory treatment of non-Ukrainian refugees fleeing to Poland, including attacks by anti-migrant gangs, the distribution of false news reports about alleged crimes committed by non-European migrants, and unequal treatment by Polish guards and officials. A key concern, according to the Ombudsperson, is that whereas refugees from Ukraine are not being detained, nationals from other parts of the world sometimes are.

76) Poland's abusive response to migration challenges on its border with Belarus has also included widespread detention.

77) **RECOMMENDATIONS**

- **Prohibit the detention of all children, both accompanied and unaccompanied, and ensure that this prohibition is respected in practice;**
- **Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;**
- **Guarantee that victims of violence are not placed in detention;**
- **Cease the arbitrary detention of migrants trying to cross the border between Poland and Belarus;**

- Ensure that immigration detention is implemented in humane and appropriate conditions, that detainees have: sufficient personal space and are not placed in containers; access to adequate health care; access to legal advice, information and assistance; adequate food; access to outdoor spaces; access to means of communication with the outside world;
- Investigate reports of discriminatory treatment and possible detention of third country nationals fleeing the war in Ukraine and ensure that all refugees are given equal protection in accordance with Article 3 of the 1951 Refugee Convention.

About the authors

Association for Legal Intervention (SIP) is the national human rights civil society organization based in Warsaw. Its mission is to ensure social cohesion by promoting equality of all people before the law, with particular focus on the rights of migrants, refugees and asylum seekers.

Lambda Warszawa is the national LGBTI support charity based in Warsaw, Poland, established in 1997. It provides advocacy and support services to persons experiencing homophobia, biphobia and transphobia.

Birmingham City University is a public university based in Birmingham, England. The BCU Centre for Security and Extremism brings together academic expertise from staff and students working on issues related to hate crime, Islamophobia and political and human (in)security.

Global Detention Project is a non-profit organisation in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status.

The report was drafted by Maja Łysienia, PhD and Piotr Godzisz, PhD.

¹ SIP, 'SIP w działaniu. Prawa cudzoziemców w Polsce w 2019 roku', 2020, available in Polish at: <https://interwencjaprawna.pl/wp-content/uploads/2020/04/SIP-RAPORT-2019.pdf#page=51%22%3E>, 78;

SIP, 'SIP w działaniu. Prawa cudzoziemców w Polsce w 2020 roku', 2021, available in Polish at: https://interwencjaprawna.pl/wp-content/uploads/2021/01/raport_SIP_w_dzialaniu_2020.pdf, 87-88.

² Ustawa z dnia 17 grudnia 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw, available in Polish at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000091>.

³ K. Wysińska-Di Carlo and W. Klaus, 'Pracodawcy i pracodawczynie a zatrudnianie cudzoziemców i cudzoziemek', SIP and Konrad Adenauer Stiftung, 2018, available in Polish at:

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