

**Submission by the United Nations High Commissioner for Refugees**  
**For the Office of the High Commissioner for Human Rights' Compilation Report**  
**Universal Periodic Review: 4th Cycle, 41st Session**

**POLAND**

**I. BACKGROUND INFORMATION**

Poland acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1991. Poland has not ratified the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Poland's *Act on Granting Protection to Foreigners (Law on Protection)*<sup>1</sup> and its bylaws regulate issues related to international protection. According to the *Law on Protection*, asylum applications in Poland are filed with the Border Guards (BG), who are responsible for receiving, registering and transferring them to the Office for Foreigners (OFF) for review and status determination.

In response to a 2021 political crisis at the Poland-Belarus border, amendments to the *Act on Foreigners*<sup>2</sup> and *Law on Protection* entered into force on 26 October 2021. As stated by authorities, these amendments 'de-formalize' border procedures to accelerate returns, prohibit re-entry into Poland, and protect Polish residents from potential terrorist threat.<sup>3</sup> In law and practice, they significantly restrict access to asylum and have drawn sharp criticism from international, European, and national organizations.

Specifically, persons apprehended crossing the border irregularly are barred entry to Polish territory and issued a return order prohibiting entry from 6 months to 3 years, regardless of international protection needs. This order can be appealed but has immediate effect (Art. 303b, *Act on Foreigners*). Additionally, the Head of OFF has the discretion to disregard an asylum application filed by such persons, unless they i) arrived directly from a territory in which their life or liberty was under threat of persecution, ii) presented credible causes for irregular entry, and iii) filed an application for granting international protection immediately upon crossing the border (Art. 33.1a, *Law on Protection*). These provisions render the right to seek asylum conditional and dependent on the justification of irregular crossing.

On 20 August 2021, the Minister of the Interior and Administration amended the *Regulation on temporary suspension or restriction of border traffic at certain border crossing points (Mol COVID Regulation)*.<sup>4</sup> This regulation created categories of persons permitted to enter Poland, with no reference to those in need of and seeking international protection. It also added a new provision that a person outside these categories should immediately leave Polish territory (Sec. 2a, *Mol COVID Regulation*). Additionally, a person found at a Polish border crossing at which border traffic has been suspended (i.e. a closed border crossing at which no border checks are performed and no entries are permitted), or outside of the border crossing, shall be returned to the state border (Sec. 2b, *Mol COVID Regulation*). As a consequence, UN agencies, NGOs, civil society organizations and the press were banned for accessing border areas where persons were stranded while attempting to cross to Poland. Despite of UNHCR's mandate, access to persons potentially in need of international protection has not been granted.

On 30 November, the President of Poland signed the newly amended *Act on the Protection of the State Border*, among others incorporating emergency ban on access to the border to the law Locations are the same as the state of emergency area (183 municipalities).

Border Guard reported that in 2021, out of a total of 39,669 attempts "to cross the border against the law" from Belarus to Poland, 33,776 were prevented. 2,384 people received

decisions to leave the territory of Poland, and 3,497 people were detained (out of which roughly 60% applied for international protection).. Regardless of the potential admission into the territory and the access to asylum procedures, asylum seekers crossing the border irregularly have automatically been put in detention.

OFF data shows Poland registered 4,522 applications (7,704 persons) for international protection in 2021, including 2,258 Belarusians, 1,785 Afghans (including 991 Afghans evacuated from Afghanistan), and 1,399 Iraqis. Of these, 1,019 persons were granted refugee status and 1,136 subsidiary protection at first instance (refugees mainly Afghans 751, Belarusians 140, Russians 17 and subsidiary – 1008 Belarusians), alongside 1,457 negative decisions and 1,090 dismissals.

While international protection applications are in process, OFF, under the supervision of Mol, provides financial assistance to asylum-seekers. The Ministry of Family, Labour and Social Policy provides integration services for beneficiaries of international protection. However, per a report of the Supreme Audit Office, these integration services were ineffective due to decentralization of the system and the lack of cooperation between responsible institutions.<sup>5</sup>

According to the most recent census, in 2011, 2,020 stateless persons and 8,805 foreigners with undetermined nationality resided in Poland. According to the personal identification number registration database (PESEL), there are 1,328 stateless persons in the country.

## II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

### Challenges linked to outstanding 3<sup>rd</sup> cycle UPR recommendations

#### Issue 1: Access to territory and *non-refoulement*

Linked to 3<sup>rd</sup> cycle UPR recommendation no. 120.180: “Take measures towards respecting fully the principle of *non-refoulement* when it comes to a foreigner’s refugee status (Greece).”

The *non-refoulement* obligation is applicable wherever a State exercises jurisdiction,<sup>6</sup> including at the border.<sup>7</sup> States shall not reject asylum-seekers and refugees at the border or deny them entry or admission, without an individual assessment of their international protection needs and the eventual risks upon return.<sup>8</sup> Denying access may result in breach of the *non-refoulement* obligation. States are further bound not to transfer any person to another country if this would result in exposing them to serious human rights violations, notably arbitrary deprivation of life,<sup>9</sup> torture<sup>10</sup> or other cruel, inhuman or degrading treatment or punishment.<sup>11</sup>

The right to seek asylum (international protection) is enshrined in Article 56 of the *Constitution of the Republic of Poland*<sup>12</sup> while the *Law on Protection* and related regulations govern international protection. Pursuant to the amendments to the *Law on Protection which took place during the emergency at the border with Belarus*, Art. 24(1) and 30(1), Polish law does not provide for anymore for an international protection procedure at the border for persons crossing irregularly, who are *de facto* and *de iure* deprived from access to asylum except on few cases admitted on humanitarian basis (mostly medical grounds). Although BG has no authority to refuse to register international protection applications, recent legislative amendments allow them to exercise their discretion to reject asylum applications at the border, for persons crossing irregularly, and issue return decisions.

UNHCR has found that recent legislative changes significantly restrict access to international protection for persons intercepted in the border area, creating *de facto* two categories of asylum-seeker and penalizing irregularly crossing. Authorities have also routinely failed to

ensure effective access to procedures for those who do appear at an official border crossing.

Prior the emergency at the border with Belarus, the European Court of Human Rights (ECtHR) had already ruled that Poland's "*wider state policy of refusing entry to foreigners coming from Belarus*" violated, *inter alia*, Art. 3 ECHR.<sup>13</sup> In its Grand Chamber judgment of *M.K. and Others v. Poland*, it held that Poland's failure to examine an applicants' asylum claims exposed them to a real risk of being subjected to inhuman or degrading treatment, as well as torture. Given the risk of chain *refoulement* in Belarus, the Court held that Poland knowingly exposed applicants to treatment prohibited by Article 3 ECHR. This was further confirmed in the judgment in *D.A. and Others v. Poland*. This has been exacerbated by recent events.

In practice, UNHCR notes increased reports of denial of access to territory and international protection. Estimates of 'pushbacks' are difficult to assess as official statistics are insufficiently detailed, although testimonies on push back incidents – including use of violence - have been shared in the public domain by several organizations. This is exacerbated by the lack of access to the emergency zone established in September 2021 by humanitarian and international organizations, including UNHCR. As mentioned above, from August to 31 December 2021, BG reported 39,670 apprehensions (including repeated attempts).<sup>14</sup>

#### **Recommendations:**

UNHCR recommends that the Government of Poland:

- a) Ensure access to the territory and the asylum procedure for those who may be in need of international protection;
- b) Ensure full respect for the principle of *non-refoulement*, including by ensuring that border policies and emergency measures do not place undue restrictions on the right to seek and enjoy asylum; and
- c) Ensure independent oversight mechanisms and UNHCR have unrestricted access to areas where asylum-seekers may be deprived of liberty, including border areas and transit zones.

#### **Issue 2: Detention of children**

**Linked to 3<sup>rd</sup> cycle UPR recommendation no. 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)" **and 120.182:** "Take urgent measures in order that asylum-seeking children are not deprived of their liberty (Argentina)".

In line with international human rights standards, and UNHCR's Detention Guidelines, children should not be detained for immigration purposes, irrespective of migratory status or that of their parents, and detention is never in their best interest. Appropriate care arrangements and community-based programmes should be in place to ensure adequate reception of children and their families.<sup>15</sup> States must consider all possible alternative arrangements for cases involving children.

Poland's amended *Law on Foreigners* and *Law on Protection* permit the detention of accompanied asylum-seeking children with family if an adult family member is in detention, often in separate family units. The duration of a child's detention often equals that of family members. Unaccompanied minors over age 15 can also be placed in detention, with the exception of those seeking international protection.

The ECtHR, in cases concerning use of detention for families with children in Poland, reiterates that the best interests of the child principle ought to be the primary consideration. In *Bistieva and Others v. Poland* (judgement of 10 April 2018), the Court held "the child's

best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life”<sup>16</sup>

Nevertheless, Poland has not changed its practices. In 2021, children comprised 30% of those held in immigration detention, including unaccompanied and separated children. UNHCR finds that children in detention in Poland do not have equal access to full-time education and additional rights under *Polish Education Law*. Instead, they are offered limited individual study.

### **Recommendations:**

UNHCR recommends that the Government of Poland:

- a) End the detention of children for immigration-related purposes, whether accompanied, unaccompanied, or separated, and ensure that the best interests of the child the primary consideration in all decisions affecting children;
- b) Provide equal access to full-time mainstream education for all asylum-seeking children, and access to safe recreational space and activities; and,
- c) Establish appropriate care arrangements and community-based programmes to ensure adequate reception of children and their families.

### **Issue 3: Statelessness**

**Linked to 3<sup>rd</sup> cycle UPR recommendation no. 120.20:** “Consider acceding to the Convention relating to the Status of Stateless Persons (Bulgaria)” and 120.21: “Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Australia, Côte d’Ivoire)”.

State accession to the *1954* and *1961 Conventions* strengthens the legal framework for protection of stateless persons and prevention of statelessness by ensuring respect for, and observance of, human rights and fundamental freedoms for all without discrimination.

Poland has not ratified the *1954 Convention* nor the *1961 Convention* and has no statelessness determination procedure. Polish legislation, nevertheless, states that a stateless person is considered a foreigner under Article 3(2) of the *Act on Foreigners*. Potential options for nationality assessment are primarily international protection and return procedures.

Without legal status, stateless persons are subject to human rights violations and can enter a cycle of failed expulsion and prolonged or repeated detention and release into destitution.

Additionally, the current safeguard in the nationality law only allows children born stateless in the territory to acquire Polish nationality in case the parents are unknown, stateless or of undetermined nationality. It excludes children who are stateless as they cannot acquire the nationality of their parent(s).

### **Recommendations:**

UNHCR recommends that the Government of Poland:

- a) Accede to the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Ensure that the *Law on Polish Citizenship* provides adequate safeguards against statelessness at birth and grant nationality to children born in the country if they would otherwise be stateless;
- c) and,
- d) Establishes a dedicated statelessness determination procedures and ensure access to durable solution for stateless persons.

## **Additional protection challenges**

### **Issue 4: Humane detention conditions and alternatives to detention**

**Linked to 3<sup>rd</sup> cycle UPR recommendation no. 120.171 *Adopt concrete measures to strengthen the protection of migrants, refugees and asylum seekers (Guatemala)***

UNHCR's Detention Guidelines emphasize that the rights to liberty, security, and freedom of movement apply to asylum-seekers, and any decision to detain asylum-seekers for immigration-related purposes should be necessary, reasonable, and legitimate based on an individual assessment. In all cases, alternatives to detention (ATD) should be considered.

The amended *Act on Foreigners* provides for the detention of asylum-seekers. Although it does not envision detention as a measure of last resort, detention is applied only if alternatives cannot be found. The Border Guard may detain persons only on lawful grounds, including: to establish identity; where there is a risk of absconding; for pre-removal detention; for transfers under the Dublin Regulation; and for state security or public order reasons. Upon apprehension, the Border Guard may apply alternatives to detention directly or request the court to decide on detention or the application of alternatives.

Additionally, the length of detention shall not exceed 12 months. However, the 6-month duration of international protection proceedings is not counted against this period. Where a person lodges a claim for judicial review of their return order to the administrative court, their stay in detention may be extended up to 18 months.

On 13 August 2021, the Ministry of Interior amended the Ministerial Regulation of 24 April 2015,<sup>17</sup> establishing: "*if it is necessary to place a large number of foreigners at the same time in a detention center, the foreigner may be placed, for a period, not longer than 12 months, in a room, the area of which is less than 2m x 2m per one foreigner.*"

The crisis on the Poland-Belarus border had a major impact on detention conditions. Since mid-2021, reception capacities in Poland have been strained, with detention centers operating at full (and expanded) capacity. According to the Border Guard, in 2021, 3,529 individuals were held in detention in total, with 1,732 remaining in detention as of 31 December 2021. Only 94 persons were accorded ATDs. Of those still in detention, roughly 60% applied for international protection.

During detention monitoring, UNHCR found confusion, frustration and anxiety among detainees due to poor conditions and limited information (including limited interpretation services in relevant languages; limited access to medical and psychosocial care; and lack of access to legal advice (including limited access to computers, phones, and internet for outside contact and no regular and unrestricted access of lawyers). The Border Guard noted they were reviewing possible improvements to adjust to the new situation.

In addition, pregnant and nursing mothers are placed in detention unless there is a specific threat to health or life. Release is not authorized even in cases of miscarriage and its physical and psychological consequences.

Relatedly, while registration centers are not considered detention under national legal and administrative frameworks, persons admitted there are *de facto* deprived of liberty. UNHCR observations from November 2021 found poor conditions,<sup>18</sup> including sleeping arrangements of mattresses on the floor in a common room of mixed age/gender. Lack of privacy and access to information or legal aid compound disorientation and mental health issues.

#### **Recommendations:**

UNHCR recommends that the Government of Poland:

- a) Implement, without delay, alternatives to detention in law and in practice;

- b) Ensure that detention of asylum-seekers is only used as a measure of last resort, where necessary and proportionate, and for as short period as possible; and,
- c) Ensures that conditions in detention and reception facilities are humane and dignified and that victims of torture and other vulnerable individuals are not placed in detention.

## UNHCR March 2022

<sup>1</sup> Act on Granting Protection to Foreigners on the Territory of the Republic of Poland, 13 June 2003, Dz. U. 2003 Nr 128 poz. 1176.

<sup>2</sup> Act on Foreigners of the Republic of Poland of 12 December 2013, as amended, Dz. U. 2013 poz. 1650.

<sup>3</sup> Draft law with Explanatory of Memorandum is available under:

<https://orka.sejm.gov.pl/Druki9ka.nsf/0/66CB4F4C2F85334EC12587420031E720/%24File/1507.pdf>

<sup>4</sup> Regulation of the Minister for Interior and Administration of 13 March 2020 on temporary suspension or restriction of border traffic at certain border crossing points, as amended on 20 August 2021,

<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf>, and

<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000435>

<sup>5</sup> Information about the final report of the Supreme Audit Office on the system of social support for refugees in Poland, published on 13 November 2015, report itself is available through the following website: <https://www.nik.gov.pl/aktualnosci/niko-systemie-pomocy-spoecznej-dla-uchodzcow.html>.

<sup>6</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, paras. 24, 26, 32-43, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy*, March 2010, paras. 4(1)(1)-4(2)(3), <http://www.unhcr.org/refworld/docid/4b97778d2.html>.

<sup>7</sup> UNHCR, *Note on the Principle of Non-Refoulement*, part E, <http://www.refworld.org/docid/438c6d972.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, January 2007, paras. 26-31, <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; ExCom Conclusion No. 6 (XXVIII) 1977, para. (c).

<sup>8</sup> ExCom Conclusion No. 6 (XXVIII), 1977, para. (c); ExCom Conclusion No. 14 (XXX), 1979, para. (a); ExCom Conclusion No. 22 (XXXII), 1981, para. II.A.2; ExCom Conclusion No. 81 (XLVIII), 1997, para. (h); ExCom Conclusion No. 82 (XLVIII), 1997, para. (d)(ii); ExCom Conclusion No. 85 (XLIX), 1998, para. (q).

<sup>9</sup> The right to life is guaranteed under Article 6 of the 1966 Covenant on Civil and Political Rights (ICCPR), (999 U.N.T.S. 171); Article 2 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS 005, 213 U.N.T.S. 222); Article 4 of the American Convention on Human Rights; and Article 4 of the African Charter on Human and People's Rights, 21 I.L.M. 58 (1982), (Banjul Charter).

<sup>10</sup> An explicit *non-refoulement* provision is contained in Article 3 CAT which prohibits removal of a person to a country where there are substantial grounds for believing they would be in danger of being subjected to torture.

<sup>11</sup> Obligations under ICCPR as interpreted by the Human Rights Committee also encompass the obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing there is a real risk of irreparable harm, such as that contemplated by Articles 6 (right to life) and 7 (right to be free from torture or other cruel, inhuman or degrading treatment or punishment), either in the country to which removal is to be effected or in any country to which the person may subsequently be removed, thereby recognizing that relevant provisions of ICCPR entail prohibition of indirect *refoulement*. For scope of obligations under Article 7 ICCPR, see Human Rights Committee in its *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9 ("States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*"); and *General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12. See also ECtHR holding *non-refoulement* is an inherent obligation under Art. 3 ECHR in cases where there is real risk of exposure to torture, inhuman or degrading treatment or punishment, including the judgment in *Hirsi Jamaa and Others v. Italy*, no. 27765/09, judgment [GC] of 23 February 2012, para. 114.

<sup>12</sup> Republic of Poland, *The Constitution of the Republic of Poland* of 2 April 1997, Journal of Laws, Dz.U. 1997, no 78, item 483, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.html>.

<sup>13</sup> ECtHR, *M.K. and Others v. Poland*, note 22 above, paras 184-186, 208-209; ECtHR, *D.A. and Others v. Poland*, note 22 above, paras 81-84.

<sup>14</sup> See: [https://twitter.com/Straz\\_Graniczna/status/1478717305928491009](https://twitter.com/Straz_Graniczna/status/1478717305928491009).

<sup>15</sup> UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>.

<sup>16</sup> The Court similarly held in *A.B. and Others v. Poland* (judgment of 4 June 2020) that placement of a family in detention, and thus in conditions typical of a penitentiary, constitutes interference with the right to protection of family life (Art. 8 ECHR). In *Bilalova and Others v. Poland* (judgment of 26 March 2020), the Court found Poland violated Article 5(1) ECHR against children placed in detention with their mother, as authorities had not given due consideration to alternatives and had not taken necessary steps to minimize the duration.

<sup>17</sup> Regulation of the Minister of Interior and Administration of 13 August 2021 amending the Regulation on detention centers and arrests for foreigners, available at: <https://dziennikustaw.gov.pl/DU/2021/1482>

<sup>18</sup> From August–December 2021, UNHCR visited six detention centers and two registration centers. The Registration Centers were established in August 2021 by the Decision of the Commander of the Podlasie Unit of BG and are dedicated to the reception of persons who irregularly crossed the border and await an administrative procedure.