

**Joint Submission to the
Human Rights Committee**

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with the support of



1. Introduction

Halina Nieć Legal Aid Center (HNLAC), with the support of the European Network on Statelessness (ENS), welcomes the opportunity to make this submission to the Human Rights Committee, on issues in Poland related to forced migration, refugee protection, and statelessness.

The Halina Nieć Legal Aid Center (HNLAC) is a national non-profit non-governmental organisation established in 2002 in Cracow, Poland. HNLAC's main objective is to protect human rights by providing free legal counsel to asylum seekers, refugees and stateless persons. During the past 22 years of its existence the HNLAC provided free legal aid to over 38,000 persons. Apart from providing free legal aid, the HNLAC also carries out regular monitoring of the adherence to standards of human rights, undertakes legal interventions and advocacy activities, and pursues research and educational projects. The HNLAC cooperates with many national and international stakeholders, first and foremost acting as UNHCR's implementing legal partner in Poland (since 2003). Moreover, the HNLAC cooperates with the International Rescue Committee, and is a member of ENS.

The European Network on Statelessness (ENS) is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. The section on statelessness in this submission partially draws on information and analysis from the Statelessness Index on Poland,¹ maintained and developed by ENS and its members. The Index is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. ENS supports and endorses the statelessness section of this submission.

This submission sets out key concerns about the fulfilment of the International Covenant on Civil and Political Rights ('the Covenant' or 'ICCPR'), and in particular with regard to: the right to physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8); the right to liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9, 10, 11); the child's right to nationality (Article 24), the right to a legal identity (Article 16), to freedom of movement (Article 12) and the prohibition of discrimination (Articles 2 and 26).

As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to nationals of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party². Therefore, this submission is centred around the application of the above listed rights in relation to non-nationals in Poland: asylum seekers, refugees, irregular migrants, and stateless persons.

¹ See <https://index.statelessness.eu/country/poland>.

² CCPR, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para. 10.

2. Executive Summary

This submission aims to present key concerns regarding the treatment of asylum seekers, refugees and stateless persons, particularly those in administrative detention and border situations, to the Human Rights Committee for its upcoming session on Poland.

This submission highlights the following key concerns:

- 1) Non-refoulement:
 - Domestic legislation undermining the non-refoulement standard and allowing for pushbacks of asylum seekers to Belarus.
- 2) Detention of migrants:
 - High rate of detention of migrants and risk of arbitrary and lengthy detention.
 - Detention of minors.
 - Detention of vulnerable persons, including victims of violence and torture.
 - Insufficient access to specialist assistance, including medical and psychological help for those in detention.
- 3) Statelessness:
 - Poland is not party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
 - There is no definition of statelessness in Polish law, and in practice the term “stateless” is interpreted inconsistently.
 - Poland has no dedicated statelessness determination procedure and protection status in place. The existing legal pathways for the regularisation of the status of stateless people are inadequate.
 - The safeguard against statelessness of children born in Poland is not sufficient.
 - There are no clear legal safeguards against the detention of persons where no reasonable prospect of removal exists, including for stateless people who are particularly affected by this issue.
 - Certain stateless people fleeing the war in Ukraine face challenges to access meaningful protection, due to deficiencies in the Polish legal framework related to statelessness.

3. Non-refoulement

Issue:

Domestic legislation undermining the non-refoulement standard and allowing for pushbacks of asylum seekers to Belarus.

Applicable Legal Framework:

By virtue of Article 2, the ICCPR does not allow in any manner to “remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”³

Relevant Recommendations:

Poland has received the following recommendations related to the application of non-refoulement safeguards:

- Human Rights Committee:

“Ensure that access to asylum is not obstructed on grounds of religious discrimination or other grounds prohibited by the Covenant, and establish a system of proper screening that ensures that asylum seekers are not returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant”.⁴

“Ensure that access to asylum is not obstructed on grounds of religious discrimination or other grounds prohibited by the Covenant, and establish a system of proper screening that ensures that asylum seekers are not returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant”.⁵

- Committee against Torture:

“Refrain from engaging in pushbacks and refoulement, and set up accessible and protection-sensitive entry systems at border crossing points”,⁶

“Ensure that that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party’s jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair and impartial review by an independent decision-making mechanism on expulsion, return or extradition, with suspensive effect, and that such individuals have access to legal assistance”,⁷

³ CCPR, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para. 12.

⁴ Report on follow-up to the concluding observations of the Human Rights Committee. Addendum 3, CCPR/C/128/3/Add.3, Adopted by the Committee at its 128th session (2–27 March 2020).

⁵ Human Rights Committee “Concluding observations on the seventh periodic report of Poland” (23 November 2016), CCPR/C/POL/CO/7

⁶ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

⁷ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

“Ensure the rapid and appropriate identification of persons in a vulnerable situation, including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services”⁸;

Background information:

In August of 2021, the border crisis between Poland and Belarus had begun, when numbers of nationals of Iraq, Afghanistan, Syria and Yemen as well as African countries attempting to enter Poland irregularly from Belarus have increased significantly.

Initially, the Polish Border Guard detained foreigners who had crossed the border and applied to place them in detention centres for foreigners, where they had a chance to ask for asylum. As the pace of irregular arrivals picked up, Poland amended its practice with a view to restrict irregular border traffic. On 20 August 2021, the Minister of Interior introduced changes to a Regulation which was originally aimed at restricting border crossings due to the Covid pandemic.⁹ These changes permitted the Border Guards to proceed with a summary return (including group expulsions) of those crossing irregularly, back to the border with Belarus, without due process of law, identification procedures or special needs screening and without a possibility of asking for asylum.

The next step in the changing of the legal framework was the introduction of a localised state of emergency in 183 Polish municipalities on 2 September 2021. Almost simultaneously, the Polish authorities also began the construction of a fence between the two countries aimed at stopping the irregular border crossings. The state of emergency along the border with Belarus was lifted on 1 July 2022, after the construction of a fence had been completed, but in June 2024 a new Regulation was passed reintroducing what is currently called “the buffer zone.”¹⁰

In October 2021, the Polish Parliament passed crucial amendments to the Act on Foreigners and the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland. According to these amendments, a foreigner who “was apprehended immediately after illegally crossing the border” is issued a decision on leaving the territory of Poland containing the order of expulsion and a prohibition of entry to the Schengen area for a period between six months and three years. There is no possibility of filing an effective appeal to such an order, as the appeal does not result in suspending the enforcement of the expulsion. Moreover, the appeals are to be handled by the Commander In-Chief of the Border Guard (the superior of the commander of the post of the Border Guard), which questions the effectiveness of the appeal procedure and renders the legal remedy illusory.

Moreover, according to the amended law on Granting Protection to Foreigners, the Office for Foreigners was granted the right to leave unexamined an asylum application filed by a foreigner who was stopped immediately after illegally entering unless they had arrived from a country where their life and freedom were threatened.¹¹ These interrelated and purposeful legal changes have led to creating a legal framework that

⁸ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

⁹ Regulation of the Minister of Internal Affairs and Administration of 20 August 2021 amending the Ordinance on Temporary Suspension or Restriction of Border Traffic at Certain Border Crossings (Journal of Laws 2021, item. 1536)

¹⁰ Regulation of the Minister of Internal Affairs and Administration of June 12, 2024 on a temporary ban on staying in a specified area in the border zone adjacent to the state border with the Republic of Belarus.

¹¹ Article 33 sec. 1a of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

derogates the basic procedural safeguards, thereby undermining the very core of the non-refoulement principle.

Therefore, according to the currently binding legal framework, there are three procedures in force which violate the non-refoulement principle, prohibited by Article 2 ICCPR, and allow for pushbacks of irregularly arriving migrants to the territory of Belarus:

- a) The first one stems from the Regulation of the Minister of Internal Affairs and Administration of 20 August 2021 amending the Ordinance on Temporary Suspension or Restriction of Border Traffic at Certain Border Crossings (Journal of Laws 2021, item. 1536).

On the basis of this act, the Border Guard were granted the power to forcibly return foreigners intercepted in (unspecified) proximity to the border, without: identification, due process of law (no return procedure is initiated) or the possibility to file an asylum application, even if the intercepted person is declaring the wish to ask for asylum. Thus, this procedure contains no safeguards against refoulement.

- b) The second one is specified in Article 303b applied in conjunction with Article 303 sec. 1 pt.9a of the Law on Foreigners, introduced by the Law of 14 October 2021 amending the Law on Foreigners and other Acts of Law (Journal of Laws 2021, item. 1918).

On this basis, in case of intercepting a foreigner immediately upon irregularly crossing the border, the Commander of the Border Guard post, competent due to the place of crossing the border refrains from initiating a return procedure, draws up a border crossing protocol and issues a decision to leave the territory of Poland. Although such a decision may be appealed to the Commander-in-Chief of the Border Guard, the appeal does not have a suspensive effect, rendering it only a virtual legal remedy. Similarly to the first one, this procedure does not contain any safeguards against refoulement and allows for collective expulsion of foreigners without any individual consideration of their status and/or needs.

- c) The third legal basis facilitating pushbacks is Article 33 sec. 1a of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland.

This legal provision allows the Head of Office for Foreigners to leave unexamined an application for international protection filed by a foreigner, if the person was detained immediately after crossing the border irregularly¹² unless the foreigner arrived directly from the territory where their life or freedom were endangered or where they were at risk of persecution or serious harm, presented credible reasons for irregular entry into the territory of Poland and filed an application for international protection immediately after crossing the border.

As an effect of this provision added in October 2021, the Office for Foreigners was granted broad, discretionary powers to decide whether to allow for processing of an asylum application in case of a foreigner who entered Poland irregularly, undermining the safeguards of the non-refoulement principle.

All these legal provisions summarised above are a clear violation of Poland's international obligations related to non-refoulement principle and are not in line with the Polish constitution and relevant EU law.

¹² i.e. in violation of the law constituting an external border within the meaning of Art. 2 point 2 of Regulation No. 2016/399 of the European Parliament and of the Council of 9 March 2016 on the Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ EU L 77, 23.03.2016, p. 1, as amended).

Relevant Statistics:

The actual scope of pushbacks and possible non-refoulement infringements on the Polish-Belarusian border remains largely unknown, as the Polish Border Guard have been systematically collecting data concerning persons turned back to the border on the basis of the Regulation on cross-border movement only since 5 July 2023.

According to these statistics, during the period between 5 July and 31 December 2023, 6,055 persons were returned to Belarus on the basis of the Regulation on cross-border movement. Eight persons were returned to Belarus on this basis in the period between 1 January and 5 February 2024, while in 2023, 1,295 persons were issued orders to leave Poland on the basis of the amended Law on Foreigners.

As for the number of decisions refusing entry issued at the Belarusian border, the number did not significantly change compared to the previous year, with 2,425 decisions issued in 2023 compared to 2,623 in 2022. Only 34 persons appealed these decisions in 2023. This information gives only a partial picture of the number of persons seeking to enter Poland in 2023. The actual number of persons in need of international protection who were present at the Belarusian border is unknown.¹³ Even the UN Special Rapporteur on Human Rights of Migrants in April 2023 confirmed that “it is challenging to obtain accurate data on the full scope of pushback practices in Poland”.¹⁴ NGOs and other independent entities monitoring the human rights situation in the area surrounding Polish-Belarusian border since the beginning of the crisis report that at least 9,640 pushbacks took place from the Polish territory in the period between August 2021 and June 2024.¹⁵

It should be also noted that, until the end of January 2024, the European Court of Human Rights (ECtHR) communicated 11 cases concerning pushbacks at the Polish-Belarusian border to Poland¹⁶. They concern 23 applications and 84 third-country nationals (16 minors), mainly originating from Afghanistan (37 persons), Iraq (26) and Syria (16). The applicants invoke *inter alia* violations of Articles 3 and 13 of the European Convention on Human Rights (ECHR) and Article 4 of the Protocol no. 4 to the ECHR, but also Article 2.¹⁷

The ECtHR has also previously delivered judgements against Poland, concerning collective expulsions at the Poland-Belarus border before the 2021 crisis.¹⁸ In the opinion of the NGOs, these judgements have not been satisfactorily implemented¹⁹ and until the present-day Poland did not ensure an effective access to procedure and protected those in need from collective expulsions. On the contrary, the current

¹³ AIDA Asylum Information Database: <https://asylumineurope.org/reports/country/poland/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

¹⁴ Visit to Poland – Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, 21 April 2023, available (EN) at: <https://bit.ly/44qUi05>.

¹⁵ We Are Monitoring, Interactive Data Dashboard, available (EN) at: <https://wearemonitoring.org.pl/statystki/interaktywne-dashboardy/>

¹⁶ SIP, Communication of the Association for Legal Intervention on the execution of the M.K and Others v. Poland judgment, 12 February 2024, available (EN) at: <https://bit.ly/4bqkMh>.

¹⁷ M. Łysienia, Pushbacki w Polsce w ocenie Europejskiego Trybunału Praw Człowieka, Laboratorium Migracji, 11 August 2023, available in Polish here: <https://bit.ly/3UxgD7o>.

¹⁸ Most notably: M.K. and Others v Poland (ECtHR, judgment of 23 July 2020, Application Nos. 40503/17, 42902/17, 43643/17) concerning the repeated refusal of Polish border authorities to examine applications for international protection., A.B. and Others v. Poland (ECtHR, judgement of 30 June 2022, application no. 42907/17), available at: <https://bit.ly/41AmLO3>) and A.I. and Others v. Poland (ECtHR, judgement of 30 June 2022, application no. 39028/17), available at: <https://bit.ly/3MTYMpj>) – in both cases, the ECtHR found a violation of Articles 3 and 13 of ECHR and Article 4 of Protocol no. 4 to the Convention, in the first of the two cases ECtHR also found a violation of Article 34 of ECHR.

¹⁹ SIP, Communication of the Association for Legal Intervention on the execution of the M.K and Others v. Poland judgment, 12 February 2024, available at: <https://bit.ly/4bqkMh>.

situation on the Belarusian border deteriorated in recent years, with the legal amendments contrary to non-refoulement principle remaining in force.

On 17 July 2024, the Council of Europe Commissioner for Human Rights, Michael O’Flaherty, sent two letters sent to the Prime Minister and the Marshal of the Senate of Poland concerning the human rights situation on the border with Belarus. In his letter to the Prime Minister, the Commissioner expressed concern about the reported continuing practice of summary returns of persons across the Polish-Belarusian border, in contradiction with Poland’s obligations under international human rights law, and the human rights consequences of the so-called buffer zone established on part of that border. He called on the Polish authorities to “ensure that all laws and practices in connection with the situation on Poland’s border with Belarus comply with relevant Council of Europe human rights standards”.²⁰

Impact on Human Rights:

Under current Polish legislation, people who enter through unofficial border crossings can be immediately returned. Binding legal framework does not guarantee the conduct of meaningful individual assessments to determine individual protection needs, consistent with the prohibitions in international law of refoulement and of collective expulsions.

The three flawed procedures described above remain in stark violation of the non-refoulement principle as they allow for arbitrary decisions about the admission of asylum application and pushbacks. They also effectively disable the possibility of any individual assessment of the factual situation of the comprehended migrant, leading to the following consequences with a direct impact on human rights:

- Deprivation of effective access to asylum procedure, resulting in the risk of pushbacks, refoulement and chain-refoulement (i.e., indirect refoulement by Belarus to countries of origin where the risk of persecution is valid).
- Lack of meaningful analysis of the risk of violating the right to life or freedom, including freedom from torture and inhumane treatment in the event of being turned back to the border line or fulfilling the obligation to leave Poland, resulting in the risk of refoulement and chain-refoulement.
- Lack of screening of special needs, including but not limited to vulnerability screening, identification of victims of violence, torture, SGBV, specific medical needs, which may lead to a risk to life and health of those forcibly returned.
- Lack of an effective monitoring of the border crisis by independent media and civil society organizations, due to the establishment of the “buffer zone” along the border raising serious concerns regarding transparency and accountability.
- Lack of an effective remedy for persons forcibly returned against the denial of access to the asylum procedure.

²⁰ Full report: <https://www.coe.int/en/web/commissioner/-/poland-all-laws-and-practices-related-to-the-situation-on-the-border-with-belarus-should-comply-with-human-rights-standards>

Recommendations:

- 1. Poland should immediately revoke the Regulation of the Minister of Internal Affairs and Administration of 20 August 2021 amending the Ordinance on Temporary Suspension or Restriction of Border Traffic at Certain Border Crossings (Journal of Laws 2021, item. 1536), which allows for pushbacks of foreigners irregularly crossing the border, thus potentially leading to collective expulsion and a violation of the obligation to prevent non-refoulement.**
- 2. Poland should immediately revoke Article 303b and Article 303 sec.1 pt.9a of the Law on Foreigners, introduced by the Law of 14 October 2021 amending the Law on Foreigners and other Acts of Law (Journal of Laws 2021, item. 1918), which, applied in conjunction, allow for pushbacks of foreigners irregularly crossing the border, while the applied procedure fails to provide the requisite safeguards and guarantees, thus potentially leading to collective expulsion and a violation of the obligation to prevent non-refoulement. Instead, in cases when a foreigner is intercepted upon irregular crossing of the border a standard return procedure or readmission procedure should be instigated, with precedence given to the safeguards stemming from non-refoulement principle, and providing an effective possibility of filing an asylum application.**
- 3. Poland should immediately revoke Article 33 sec. 1a of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland limiting the access to asylum procedure, allowing for arbitrary decisions regarding the examination of asylum applications, and posing a risk of a violation of the obligation to prevent non-refoulement.**
- 4. Poland should speedily introduce an effective procedure of screening of individual special needs of those apprehended after irregular entry to Poland from Belarus.**
- 5. Poland should amend the Regulation of the Minister of Internal Affairs and Administration of 12 June 2024 on a temporary ban on staying in a specified area in the border zone adjacent to the state border with the Republic of Belarus, so as to ensure effective access to the border area for independent media and humanitarian organizations, as well as dispatch properly equipped search and rescue units.**

4. Detention of migrants

Issues:

1. High rate of detention of migrants and risk of arbitrary and lengthy detention.
2. Detention of minors.
3. Detention of vulnerable persons, including victims of violence and torture.
4. Insufficient access to specialist assistance, including medical and psychological help for those in detention.

Applicable Legal Framework:

By virtue of Article 9 ICCPR, everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention. In conjunction with the following sections of Article 9, Article 14(1), and Article 26 ICCPR, every person detained has the right to a due process, including fair trial, the right to information, as well as to non-discrimination and equal protection before the law.

At the same time, Article 7 ICCPR prohibits torture or cruel, inhuman or degrading treatment, whereas Article 10(1) ICCPR guarantees that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Crucially, Article 24(1) ICCPR concerns the universal rights of every child to such measures of protection as required by his status as a minor, without discrimination, including on the part of the State.

Relevant Recommendations:

- Recommendations from the Human Rights Committee:
“Ensure that children are not deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests”;²¹
“Refrain from detaining asylum seekers and migrants and implement alternatives, including before deportation, and in cases where individuals are detained, ensure that the detention is reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time”;²²
- Recommendations from the Committee on the Rights of the Child:
“Ensure that asylum-seeking children, refugee children, children in situations of migration and families with children are not placed in guarded detention centres”;²³
- Recommendations from the Committee Against Torture:
“Enshrine in its legislation the principle that detention of asylum seekers, and in particular children and vulnerable persons, should be used as a measure of

²¹ Human Rights Committee “Concluding observations on the seventh periodic report of Poland” (23 November 2016), CCPR/C/POL/CO/7

²² Human Rights Committee “Concluding observations on the seventh periodic report of Poland” (23 November 2016), CCPR/C/POL/CO/7

²³ Committee on the Rights of the Child, “Concluding observations on the combined fifth and sixth periodic reports of Poland” (6 December 2021) CRC/C/POL/CO/5-6:

last resort, for as short a period as possible and in facilities appropriate for their status”;²⁴

“Ensure that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party’s jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair and impartial review by an independent decision-making mechanism on expulsion, return or extradition, with suspensive effect, and that such individuals have access to legal assistance”;²⁵

“Refrain from placing persons in need of international protection, and in particular children, in guarded centres for foreigners”;²⁶

“Ensure the rapid and appropriate identification of persons in a vulnerable situation, including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services”.²⁷

Background Information:

Under Polish law, the detention of asylum seekers is intended as a measure of last resort and can only be ordered under specific circumstances. According to the 2013 Act on Foreigners, administrative detention can only be ordered by a District Court (Article 401 sec. 2) following an application from the Border Guard. Foreigners deprived of their liberty (pending asylum or return proceedings) are, according to the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland and the Act on Foreigners, accommodated in guarded centres for foreigners.

According to the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland, a decision to detain an asylum seeker is issued for a period of up to 60 days by a court, upon request by the Border Guard. If a foreigner claims asylum during their stay in a guarded centre, the period of detention can be prolonged for up to 90 days from the day of filing the application. The period of stay in a guarded centre can also be prolonged if the final decision concerning international protection has not been issued before the end of the previous period of detention and the original reasons for detention still exist. In this case, detention can be prolonged by a court for a specified period. The detention of an asylum seeker in a guarded centre cannot exceed six months.

Pursuant to the Act on Foreigners, the court indicates the period of stay in its decision on placing a foreigner in a guarded centre, but this cannot initially be for longer than three months. That period may then be prolonged for a specified period which cannot exceed six months in total. After the expiry of that six-month period, the stay may be further prolonged for a specified period, but not longer than 12 months in total. These periods do not include the period of the foreigner's stay in a guarded centre in connection with their application for international protection.

If a foreigner has filed a complaint with an administrative court against the decision obliging the foreigner to return, together with a request to suspend its enforcement, the period of stay in a guarded centre may be extended to 18 months in total.

²⁴ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

²⁵ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

²⁶ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

²⁷ Committee against Torture: Concluding observations on the seventh periodic report of Poland (29 August 2019) CAT/C/POL/CO/7

This means that the maximum time of detention of a person who was subject to both the international protection procedure and the return procedure may amount to a total of 24 months.

High rate of detention of migrants and risk of arbitrary and lengthy detention

Over the last years, international organisations, the Polish Ombudsman, and local NGOs providing legal, material, and psychological aid in the centres called for the Polish government to cease the practice of automatic and lengthy detention of asylum seekers.²⁸ This includes vulnerable persons, such as children or victims of violence and torture, often with no regards to the individual factual circumstances of the case or serious health problems of a detainee.²⁹ Furthermore, the poor standards of detention of asylum seekers in Poland are known to regularly induce conflicts and turmoil inside the detention centres, resulting in suicide attempts by detainees and hunger strikes.³⁰ As noted by the Supreme Court of Poland in the Ruling II K 148/22, contrary to the international and national law, migrant detention in Poland is abused as an automatic means to secure the potential deportation, resulting in notorious instances of wrongful confinement and unjustified and protracted deprivation of liberty.³¹ The significant problem of excessive rulings on placing and prolonging the stay of asylum seekers, especially those without valid travel and/or identity documents, infringes Article 31 and Article 52 of the Constitution of Poland, Article 88 sec.1 and Article 89 sec. 7 of the Law on granting foreigners on the territory of Poland. Detention in one of the guarded centres remains a first-choice measure, not a measure of last resort, particularly for persons seeking international protection in Poland, after crossing the Polish-Belarusian border. In theory, Border Guards and courts justify the need to isolate foreigners in guarded centres to secure the proceedings regarding an asylum application or a potential return to their home country. However, in practice, the prolonged detention is clearly breaching Article 8 of the European Union's 2013/33/EU Directive, which prohibits the use of detention solely on the ground of applying for international protection in Member States.³²

²⁸ Polish Migration Forum Foundation, Save the Children, Everyone Around is Suffering, May 2024, available (EN) at: <https://resourcecentre.savethechildren.net/document/everyone-around-is-suffering-wszyscy-wokol-cierpia/>

²⁹ Fundamental Rights Agency (FRA), European legal and policy framework on immigration detention of children, 2017, available (EN) at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-immigration-detention-children_en.pdf

The Polish Ombudsman Office, Foreigners in administrative detention, March 2021, available (PL) at: https://bip.brpo.gov.pl/sites/default/files/Obcokrajowcy_w_detencji_administracyjnej.pdf

National Mechanism for the Prevention of Torture Report: Situation of Foreigners in Guarded Centers During the Poland and Belarus Border Crisis", 2022, Available at (PL): <https://bip.brpo.gov.pl/sites/default/files/2022-06/Raport%20KMPT%20-Sytuacja%20cudzoziemc%C3%B3w%20o%C5%9Brodkach%20strze%C5%BConych%20w%20odbie%20kryzysu%20na%20granicy%20Polski%20i%20Bia%C5%82orusi.pdf>

The Rule Of Law Institute Foundation, Migrants have the right to have rights – the detention of foreigners in Poland. Situation in the year 2021, 2022, available (PL) at: <https://panstwoprawa.org/wp-content/uploads/2023/01/Detencja.pdf>

Global Detention Project, Country Report Immigration Detention in Poland. Systematic Family Detention and Lack of Individual Assessment, October 2018, available (EN) at: <https://www.globaldetentionproject.org/countries/europe/poland>

³⁰ Nomada Association for Multicultural Integration, The strike of persons detained in the guarded center for foreigners in Przemyśl, 7.09.2023, available (PL) at: <https://nomada.info.pl/strajk-osob-zamknietych-w-strzezonym-osrodku-dla-cudzoziemcow-w-przemyslu?lang=en>

Balkan Insight, Held Without Rhyme or Reason - Poland's Detention System for Migrants Labelled a Farce, 1.02.2023 available (EN) at: <https://balkaninsight.com/2023/02/01/held-without-rhyme-or-reason-polands-detention-system-for-migrants-labeled-a-farce/>

³¹ The Supreme Court of Poland Ruling, 20.06.2023, Case Number: II K 148/22, available (PL) at: <https://www.sn.pl/sites/orzecnictwo/orzeczenia3/ii%20kk%20148-22-2.pdf>

³² Directive 2013/33/EU of The European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available (EN) at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033>

Detention of minors

The ongoing problem of the detention of minors, including unaccompanied minors, in guarded centres for foreigners, poses numerous threats to the rights of children seeking protection in Poland. According to the law, children are allowed to be placed in the detention centres, when accompanied by their parents or legal guardians. According to Article 397 sec. 3 of the Act on Foreigners, it is prohibited to detain unaccompanied minors under 15 years old. At the same time - if seeking asylum in Poland - by virtue of Article 88a sec.3 point 3 of the Act on Granting Protection, unaccompanied minors cannot be detained at all, regardless of their age.

Detention of vulnerable persons, including victims of violence and torture

Both the Act on Foreigners and the Act on Granting Protection specify certain grounds which limit the possibility to apply administrative detention.

The Foreigners Act lists two separate situations in which a court cannot issue a decision to place a foreigner in detention (Article 400):

- detention could pose a danger to the life or health of the foreigner, or
- the foreigner's psychophysical condition may suggest that they have been subjected to violence.

For foreigners seeking protection, the Act on Protection lists four grounds preventing detention (Article 88a):

- detention could pose a danger to their life or health;
- their psychophysical condition may suggest that they have been subjected to violence;
- they are unaccompanied minors;
- they are persons with disabilities.

A particularly sensitive issue in Poland is the poor identification of the category of foreigners "whose psychophysical condition may suggest that they have been subjected to violence". The HNLAC practice and many independent reports confirm that the identification of this group is problematic and victims of violence may still be found in detention.

The issue of identifying foreign victims of violence in detention was assessed during inspections conducted by the National Mechanism for the Prevention of Torture (carried out by the Polish Ombudsman). In public reports from the inspections (from 2016 and 2017), concerns regarding the effectiveness of the procedure for identifying victims of violence/torture are repeatedly noted. The reports highlight confirmed cases of victims being held in detention, lengthy identification procedures (lasting even several months, during which detention is prolonged), deficiencies in documentation, and language difficulties in communication with psychologists. The Ombudsman also criticised the internal Border Guard's 'Rules of Conduct for the Border Guard with Foreigners Requiring Special Treatment', which outlines methods for identifying victims of violence and torture.³³

The Ombudsman's recommendations from 2017 have not been implemented, and the identification of victims of torture and violence remains ineffective, which directly negatively impacts the well-being and legal position of these individuals. The issue of torture victims and individuals with special needs in detention has also been raised in

³³ National Mechanism for the Prevention of Torture report: "Situation of Foreigners in Guarded Centers During the Poland and Belarus Border Crisis", 2022, Available at (PL): <https://bip.brpo.gov.pl/sites/default/files/2022-06/Raport%20KMPT%20-Sytuacja%20cudzoziemc%C3%B3w%20o%C5%9Brodkach%20strze%C5%BConych%20w%20obie%20kryzysu%20na%20granicy%20Polski%20i%20Bia%C5%82orusi.pdf>

publications by the Helsinki Foundation for Human Rights³⁴ and the Association for Legal Intervention.³⁵ The problem of properly identifying victims of violence was also recognised by the UN Committee Against Torture in its concluding report.³⁶ In 2022, the HNLAC conducted an extensive study of the files of foreign nationals placed in detention, the results of which confirmed the low effectiveness of the mechanisms for identifying this particularly vulnerable group.³⁷

The issue of the inefficiency of the system for identifying and releasing victims of violence from guarded centres for foreigners was raised on numerous occasions during the monitoring of guarded centres by NGOs,³⁸ as well as by the Ombudsman and the Children's Ombudsman.³⁹ The lack of proper and timely identification leads to the unjustified deprivation of liberty for these special categories of foreign nationals, contrary to the law, and may result in secondary traumatising and deterioration of their psychophysical condition by placing them in conditions of deprivation of liberty. This issue has arisen in complaints against Poland submitted to the European Court of Human Rights (cases A.B. v. Poland and T.K. and S.B. v. Poland, joined complaints nos. 15845/15 and 56300/15). The case of A.A. v. Poland (complaint no. 47888/19) concerning the unjustified deprivation of liberty of a person who had previously experienced violence was concluded before the European Court of Human Rights by a unilateral declaration from the Polish government admitting to the violation of the prohibition of arbitrary deprivation of liberty.⁴⁰

Insufficient access to specialist assistance, including medical and psychological help

Access to medical care, including psychological care, is a key aspect of the international protection procedure in Poland. According to Article 415 sec. 1 point 5 of the Act on Foreigners, a foreigner placed in a guarded centre for foreigners has the right to access medical care and to stay in a hospital or a healthcare institution providing stationary and round-the-clock health services, if their health condition requires it. Additionally, according to Article 413, Section 1 of the same Act, a foreigner admitted to a guarded centre for foreigners must be promptly subjected to a medical examination and, if necessary, to sanitary procedures.

The above means that every foreigner in detention has the right to urgent medical intervention when they feel unwell or when their health condition indicates the need for essential medical assistance.

It is also worth adding to the above legal provisions the Article 70 of the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland. In the Article it is said that medical care is provided to applicants of international protection. Medical care

³⁴ J. Biały, W. Klaus (red.) *Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców* przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej, Warszawa 2014.

³⁵ SIP w działaniu. *Prawa cudzoziemców w Polsce w 2018 r., maj 2019 r., SIP w działaniu. Prawa cudzoziemców w Polsce w 2019 r., maj 2020 r.*

³⁶ Concluding observations - CAT/C/POL/CO/7

³⁷ Centrum Pomocy Prawnej im. Haliny Nieć, „Raport z badania: Identyfikacja cudzoziemskich ofiar przemocy i tortur a stosowanie detencji” Czerwiec 2022, available (PL) at: <https://www.pomocprawna.org/lib/15r5fu/Identyfikacja-cudzoziemskich-ofiar-przemocy-i-tortur-a-stosowanie-detencji---Raport-2022-17yfx2ho.pdf>

³⁸ J. Biały, W. Klaus (red.) *Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców* przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej, Warszawa 2014.

³⁹ Rzecznik Praw Obywatelskich, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białymstoku (KMP.572.4.2018.MK) oraz Rzecznik Praw Dziecka, Informacja o wynikach wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Kętrzynie*, przeprowadzonej w dniu 26 lipca 2018 r. (ZSM.422.16.2018.AC)

⁴⁰ K. Stubik, *W stronę wolności. Pilotaż środków alternatywnych do detencji wspierających migrantów i migrantki*, Stowarzyszenie Interwencji Prawnej, Warszawa 2021.

is granted under the same conditions as to persons who are covered by health insurance in Poland. The above provision indicates that it is the duty of the authorities to ensure that foreigners applying for international protection in Poland have access to medical care in Poland.

It is important to note that not every foreigner staying in a guarded centre for foreigners is also an applicant for international protection in Poland. However, the aforementioned provisions clearly indicate that every foreigner in detention is entitled to medical care, and this right should be ensured by the Polish authorities.

Despite the above principles derived from legal provisions, access to medical care for detained foreigners does not meet statutory and humanitarian requirements. Reports from international and national organisations⁴¹ indicate that there are significant complications in accessing medical care in guarded centres for foreigners. Moreover, from HNLAC's experience, multiple requests from foreigners for a specialist visit are often ignored by the authorities. A major problem is the long waiting time for a visit to mental health professionals.

In light of the unjustified prolongation of detention, inadequate procedures for identifying victims of violence, torture, or inhuman and degrading treatment, and other vulnerable groups, it must be stated that medical care should provide these individuals with efficient and full access, especially to psychological and psychiatric care. The detention of individuals with special needs is highly distressing for them and may expose them to re-traumatisation.

Relevant statistics:

The exact number of persons currently detained in the guarded centres for foreigners in Poland, disaggregated into categories by age or vulnerability status, is unavailable. The number and type of facilities, as well as persons placed within them, fluctuated significantly contingent on the political decisions since the border crisis began. According to the Border Guard's update from 2021 and 2022, there were six⁴² functioning guarded centres allowing for the accommodation of 1,200 foreigners, in which the number of foreigners detained decreased from 1,750 in 2021⁴³ to 620 in 2022.⁴⁴ However after the border crisis began, three additional centres were ordained to function as closed detention facilities,⁴⁵ one of which - the temporary guarded centre in Wędrzyn - raised serious concerns regarding the inhumane conditions and violent treatment towards detainees, and has thus been deemed by the Polish Ombudsman as unacceptably violating the fundamental standards of countering torture, inhumane or degrading treatment⁴⁶. According to Article 399 of the Act on Foreigners, providing the risk that the foreigner will not comply with the rules of the guarded centre, they may be placed in an arrest inside the centre. Currently the arrest for foreigners functions in one of the detention centres (Przemysł), in which - according to the Polish Ombudsman

⁴¹ Amnesty International <https://www.amnesty.org.pl/wp-content/uploads/2022/04/Amnesty-report-POLAND-CRUELTY-NOT-COMPASSION-AT-EUROPES-OTHER-BORDERS.pdf> AIDA database: <https://asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/conditions-detention-facilities/>

⁴² The centers localized in: Lesznowola (Lisówek), Biała Podlaska, Krosno Odrzańskie, Kętrzyn, Białystok and Przemysł, all of which are still functioning.

⁴³ Border Guard Update from 28.12.2021, available (PL) at: <https://www.strazgraniczna.pl/pl/aktualnosci/9666,Osrodki-dla-cudzoziemcow.html>

⁴⁴ Border Guard Update from 10.12.2022, available (PL) at: <https://strazgraniczna.pl/pl/aktualnosci/11050,Strzezone-osrodki-dla-cudzoziemcow-filmy-i-foto.html?search=245944233452>

⁴⁵ Localized in: Biała Podlaska, Czerwony Bór and Wędrzyn.

⁴⁶ Conclusions after the third visit of the Polish Ombudsman in the Wędrzyn Guarded Center for Foreigners, 24.01.2022, available (PL) at: <https://bip.brpo.gov.pl/pl/content/rpo-wedrzyn-cudzoziemcy-osrodek-standardy>

- too many foreigners are being held with no sufficient justification for their deprivation of liberty.⁴⁷

The Polish authorities do not publish any data indicating type or numbers of cases of persons in situations of vulnerability - under Article 68 sec. 1 of the Act on granting foreigners protection on the territory of Poland, described as “persons requiring special treatment” - who have been placed in detention, nor the statistics on how many of them, when and on what grounds were released. Some information is available following the reports from the inspection of the National Mechanism for the Prevention of Torture (carried out by the Polish Ombudsman) in the detention centres, as well as in the form of answers from the Polish Border Guard Headquarters in response to requests for public information sent by NGOs. In 2023, 29 unaccompanied minors and 115 children were reported in detention centres, however in November 2021 after the border crisis began, out of 2,771 detainees, 567 were children⁴⁸.

Impact on Human Rights:

The conditions in the detention facilities in Poland have been criticised for being inadequate. Concerns have been raised about issues such as overcrowding, poor nutrition, insufficient medical care, and the negative impact of prolonged detention on the mental health of vulnerable groups like families with children and victims of violence.⁴⁹ Both the procedure regarding placing applicants in the guarded centres and the conditions within those facilities cause direct consequences on human rights, in the form of:

- Excessive and protracted detention of foreigners in guarded centres, where detention is not applied as a measure of last resort.
- Unlawful detention of persons in situations of vulnerability, including minors, pregnant women, victims of violence and/or torture, persons with disabilities and persons in a poor physical and/or mental health, as a result of ineffective identification and screening.
- Lack of adequate specialised accommodation and assistance for minors seeking asylum, especially unaccompanied minors, in violation of the best interests of the child and of the children’s rights to safe living conditions, to appropriate psychosocial development, including the right to education and psychological care.
- Additionally, regarding children in detention, the very process of identification of the chronological age of foreigners by the Border Guard, especially with regards to adolescents, is raising doubts relating to the accuracy and duration of the used procedure.⁵⁰ Furthermore, as noted by the Fundamental Rights Agency and the Global Detention Project, one of the significant problems with placing minors in detention facilities consists of the practice of including the

⁴⁷ The Polish Ombudsman to the Minister of the Interior Affairs, 16.02.2023, available (PL) at: <https://bip.brpo.gov.pl/pl/content/rpo-cudzoziemcy-areszty-mswia-odpowiedz>

⁴⁸ AIDA, ECRE, Country Report: Conditions in the detention facilities - Poland, last update: 10.07.2024, available (EN) at: <https://asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/conditions-detention-facilities/>

⁴⁹ AIDA, ECRE, *Ibidem*.

Global Detention Project, Country Report Immigration Detention in Poland. Systematic Family Detention and Lack of Individual Assessment, October 2018, available (EN) at: <https://www.globaldetentionproject.org/countries/europe/poland>

⁵⁰ AIDA, ECRE, *Ibidem*.

Helsinki Foundation For Human Rights, Methods of assessment the chronological age involving foreigners, December 2023, available (PL) at: <https://hfhr.pl/publikacje/metody-oceny-wieku-chronologicznego-cudzoziemcow>

children's situation solely in the decision addressed at their parents, which deprives them of their separate legal remedy.⁵¹

- The lack of an effective medical care system for detainees which can lead to many dangers and risks, primarily causing irreversible deterioration of both physical and mental health. This infringes on the fundamental human right to life. Medical care provides foreigners with the support and treatment they need at any given moment. Due to their isolation, they are unable to influence their access to medical appointments in any way. Foreigners are dependent on the healthcare organisation within the detention centre, which is inadequate and does not provide them with appropriate medical and healthcare services.

Recommendations:

- 1. Poland should immediately deploy clear guidelines and training for the Border Guard and courts stressing that detention of asylum seekers is a measure of last resort and should be implemented for the shortest time possible.**
- 2. Poland should immediately deploy procedures guaranteeing effective screening aimed at identifying persons in situations of vulnerability, especially minors, pregnant women, victims of violence or torture, persons with disabilities and suffering from serious health problems, including in need of psychological and psychiatric help.**
- 3. Poland should immediately cease the practice of placing in detention persons in situations of vulnerability, especially minors and victims of violence.**
- 4. Poland should immediately establish new and well-adjusted facilities for asylum seeking unaccompanied minors.**
- 5. Poland should immediately inform a detained person on the duration and justification of their detention. Poland should introduce regulations concerning the maximum time of such actions, especially the time limit for the identity confirmation procedures.**
- 6. Poland should immediately end the practice of arbitrarily placing asylum seekers in detention on grounds of lack of cooperation with the authorities, to avoid the situations of protracted detention without the applicants' fault.**
- 7. Poland should amend the existing regulations by adding detailed provisions regarding access to medical care for detained foreigners. Currently, foreigners in detention have no guarantees concerning access to specialist medical care or the timelines for receiving specialised assistance.**
- 8. Poland should note that the actual regulations concerning the right to medical care are terse and do not clearly outline the obligations of authorities, including the Border Guard and doctors in guarded centres, arising from the granted rights to foreigners. Poland should therefore establish specific and clear rules for providing medical assistance to foreigners in detention.**

⁵¹ European Agency for Fundamental Rights, European Legal and Policy Framework on Immigration Detention of Children, 20.06.2017, available (EN) at: <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

- 9. Poland should establish clear procedures for identifying foreigners and screening their special needs from the very beginning of their detention and placement in a guarded centre for foreigners. Recognising ailments and diseases in a foreigner at the outset of detention will significantly streamline the provision of medical care, including specialised care.**
- 10. Poland should implement the recommendations of the Ombudsman, according to which each foreigner should be examined within 24 hours of arriving at the guarded centre. This will allow for a swift assessment of the foreigner's health, enabling prompt medical response if needed. It is also important for controlling the spread of infectious diseases.**

5. Statelessness

Issues:

1. Poland is not party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
2. There is no definition of statelessness in Polish law, and in practice the term “stateless” is interpreted inconsistently;
3. Poland has no dedicated statelessness determination procedure and protection status in place. The existing legal pathways for the regularisation of the status of stateless people are inadequate;
4. The safeguard against statelessness of children born in Poland is not sufficient;
5. There are no clear legal safeguards against the detention of persons where no reasonable prospect of removal exists, including for stateless people who are particularly affected by this issue;
6. Certain stateless people fleeing the war in Ukraine face challenges to access meaningful protection, due to deficiencies in the Polish legal framework related to statelessness.

Applicable Legal Framework:

The ICCPR addresses statelessness through a number of provisions, including through its provisions on non-discrimination (Article 2), equality between men and women (Articles 3 and 23), and the right of every child to be registered immediately after birth and to acquire a nationality (Article 24).

The Polish legal framework does not have full safeguards in place to prevent children from being born stateless in the territory. Moreover, certain legal provisions contribute to considerable gaps impacting the exercise of human rights by stateless persons, most prominently those linked to the right to liberty (Article 9 ICCPR) in the context of administrative detention.

Poland has not acceded to the 1954 Convention on the Status of Stateless Persons (1954 Convention) nor the 1961 Convention on the Reduction of Statelessness (1961 Convention). Poland has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others:⁵²

- International Covenant on Civil and Political Rights (see Article 24.3)
- International Covenant on Economic, Social and Cultural Rights (see Article 2.2 and Article 3)
- Convention of the Rights of the Child (see Articles 2, 3, 7, and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (see Article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (see Article 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (see Article 18)
- International Convention for the Protection of All persons from Enforced Disappearance (see Article 25.4)

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

Poland entered two declarations to the Convention on the Rights of the Child relating to its interpretation of certain articles in line with 'Polish customs and traditions' and

⁵² See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

'principles of morality'. Poland also has reservations to the Convention Against Torture relating to confidential inquiries and arbitration.

Poland is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Poland is also not a party to the 1997 European Convention on Nationality nor to the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. As an EU Member State, it is bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive).

Relevant Recommendations:

Poland has not received recommendations from the Human Rights Committee in relation to statelessness and the right to a nationality.

Poland received four recommendations during the fourth cycle of the Universal Periodic Review (UPR) in 2023, all of which were noted. Côte d'Ivoire,⁵³ Eswatini,⁵⁴ Chile,⁵⁵ and Mexico⁵⁶ recommended that Poland accede to the 1954 Convention. Eswatini⁵⁷ and Chile⁵⁸ also recommended accession to the 1961 Convention. Moreover, Mexico,⁵⁹ recommended that Poland ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶⁰ During the third cycle (2017), Poland received four recommendations to accede to the 1954 and 1961 Conventions⁶¹ and to implement both Conventions "in order to secure the basic rights of stateless persons and introduce a formal procedure to determine statelessness."⁶² During the second cycle (2012), Poland received two recommendations to ensure the birth registration of all children, including children of undocumented migrants, which it accepted.⁶³

In 2021, the Committee on the Rights of the Child (CRC) recommended that Poland ratify the 1954 and the 1961 Conventions, the European Convention on Nationality, and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. It further recommended that Poland "strengthen the prevention of statelessness among children, including by extending protection to children born to

⁵³ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.19.

⁵⁴ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.19.

⁵⁵ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.18.

⁵⁶ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.16.

⁵⁷ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.19.

⁵⁸ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.18.

⁵⁹ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15, recommendation 114.16.

⁶⁰ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (4 January 2023) UN Doc A/HRC/52/15; UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (18 July 2017) UN Doc A/HRC/36/14; UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (9 July 2012) UN Doc A/HRC/21/14.

⁶¹ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (18 July 2017) UN Doc A/HRC/36/14, recommendation 120.20; recommendation 120.21; recommendation 120.22.

⁶² UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (18 July 2017) UN Doc A/HRC/36/14, recommendation 120.22.

⁶³ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland' (9 July 2012) UN Doc A/HRC/21/14, recommendations 90.120. and 90.98.

undocumented stateless parents.”⁶⁴ The Committee made similar recommendations in 2015, further recommending that Poland “take all necessary measures without delay to grant Polish nationality to stateless children” and “to address the problem of children with undetermined nationalities residing in its territory.”⁶⁵

In 2019, the Committee on the Elimination of Racial Discrimination (CERD) recommended that Poland accede to the 1954 and the 1961 Conventions.⁶⁶

In 2019, the Committee against Torture (CAT) recommended that Poland ratify the 1954 Convention and the 1961 Convention.⁶⁷ The Committee made similar recommendations in 2013.⁶⁸

Background Information:

Collection of data on the stateless population

The Polish Government publishes disaggregated data on the number of ‘stateless’ people according to the Polish census and data on the number of stateless people holding various types of residence permits. However, the data is unreliable as it includes overlapping terms, such as ‘undetermined nationality’, and the lack of a statelessness determination procedure prevents the adequate identification of stateless people in the country. As there is no legal definition of a stateless person in Poland, the authorities use and interpret the term inconsistently and different government departments use different overlapping terms and definitions. There is no published data on stateless people in detention, though some figures are collected by the Polish Border Guard. A mapping study on statelessness in Poland was published by UNHCR in 2019.

Lack of a procedure to determine statelessness and grant protection

Poland does not have a dedicated statelessness determination procedure (SDP), but statelessness may be identified through other administrative procedures. There is no legal definition of a stateless person and no procedure is tailored to identifying statelessness, but it can be raised as legally relevant during asylum, return or removal procedures, for example. Authorities are not obliged to consider a claim to be recognised as stateless and there is no guidance for the assessment. There are some procedural safeguards in international protection and other administrative procedures, but these vary depending on the type of procedure and there are some shortcomings in the legal safeguards, including in relation to legal aid for appeals or judicial review, interviews (which are not mandatory in return proceedings), and decisions which are given in writing but only in Polish. There is no statelessness status but rather the possibility to receive a permit for tolerated stay or humanitarian stay with a right to work, healthcare and social assistance. These permits may be issued, however, only as a result of an *ex officio* instigated return procedure which undermines their potential, and do not grant the right to reside in the country and full protection.

⁶⁴ Committee on the Rights of the Child, ‘Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland’ (24 September 2019) UN Doc CRC/C/POL/CO/5-6, paragraph 22(a)-(b); 41(i).

⁶⁵ Committee on the Rights of the Child, ‘Concluding observations on the combined third and fourth periodic reports of Poland’ (30 October 2015), UN Doc CRC/C/POL/CO/3-4, paragraph 19(a)-(c).

⁶⁶ Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland’ (24 September 2019) UN Doc CERD/C/POL/CO/22-24, paragraph 25.

⁶⁷ Committee against Torture ‘Concluding observations on the seventh periodic report of Poland’ (29 August 2019) UN Doc CAT/C/POL/CO/7, paragraph 26(f).

⁶⁸ Committee against Torture ‘Concluding observations on the combined fifth and sixth periodic reports of Poland’ (23 December 2013) UN Doc CAT/C/POL/CO/5-6, paragraph 27.

The lack of an effective SDP results in a heightened risk of arbitrary detention applied as an administrative measure during return procedures. HNLAC's legal practice shows that, as a result, even if there is no reasonable prospect of removal of a stateless person - which in itself renders the detention arbitrary - the person may still be detained and detention may later be prolonged.

Children's right to a nationality

Efforts to prevent and reduce statelessness in Poland are mixed. There is a route to naturalisation for stateless people in Poland, but residence and documentation requirements present significant barriers. There are partial safeguards in law to prevent statelessness in the case of foundlings and adopted children. Access to birth registration is facilitated in some cases, including through a provision for births to be registered *ex officio* if parents do not register the birth within the legal deadline.

According to the Polish Citizenship Act,⁶⁹ in Article 14(2) and Article 15, a child born in Poland automatically acquires Polish nationality if their parents are unknown, stateless, or have undetermined nationality, or if the child is a foundling. However, the Act does not provide safeguards against statelessness at birth where the child's parents have a nationality but cannot transfer it to the child. Children abandoned immediately after birth in a hospital are also not covered by this provision, as the hospital usually has information about the mother's details (therefore it is considered that the parents are not unknown). Moreover, in cases of conflict of nationality laws, it is possible that a child born in Poland may not acquire any nationality and may become stateless.

In the case of children born abroad to same-sex parents, while all children with at least one Polish parent are Polish nationals by law irrespective of the place of birth, there is a risk of statelessness due to discriminatory practice by the Polish authorities that may prevent the child acquiring a Polish passport or documentation. Recent cases of children of same-sex parents born abroad have raised problems as Poland does not recognise same-sex partnerships and will not issue a transcription of a birth certificate naming both parents in such cases. A judgment from the European Court of Justice in 2022 has established an obligation for the Polish authorities to issue an identity card or a passport to a minor who is a national of Poland, regardless of the transcription of a foreign birth certificate, including the family name entered in the foreign birth certificate of this child.⁷⁰ Despite the judgment, there are still reports of failures to implement this in practice.⁷¹

Protection for stateless people fleeing Ukraine

The full-scale invasion of Ukraine in 2022 has uprooted millions of people from their homes, resulting in the largest and fastest displacement crisis in Europe since World War II. Poland has become a top host country for a wave of refugees from Ukraine and quickly adapted its law to implement a system of temporary protection. Although the procedure for accessing protection has been simplified in order to facilitate its application to all those with Ukrainian nationality, other groups such as stateless people, people with undetermined nationality, and undocumented people are subject to a different procedure. Third-country nationals and stateless people may apply for a

⁶⁹ Polish Citizenship Act of April 2, 2009 (Journal of Laws of 2012, item 161)

⁷⁰ Court of Justice of the European Union, Rzecznik Praw Obywatelskich, C-2/21, 24 June 2022, ECLI:EU:C:2022:502, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=262081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1795157>. See also a summary on the Statelessness Case Law Database, <https://caselaw.statelessness.eu/caselaw/cjeu-rzecznik-praw-obywatelskich-c-221>.

⁷¹ Arpi Avetisyan, ILGA Europe and Patrícia Cabral, ENS, 'Celebrating progress in the protection of rainbow families, but more needs to be done' (18 November 2022), <https://www.statelessness.eu/updates/blog/celebrating-progress-protection-rainbow-families-more-needs-be-done>.

certificate issued by the Office for Foreigners confirming they are beneficiaries of temporary protection. Stateless people may benefit from temporary protection if they hold a valid permanent residence permit in Ukraine and cannot return to their country or region of origin in safe conditions or if they enjoyed international protection or equivalent national protection in Ukraine.

Access to protection of these vulnerable groups of refugees from Ukraine has been undermined by many factors. Challenges include legal barriers restricting their eligibility for protection, practical difficulties in gathering necessary documentation or crossing the borders, the inappropriate identification of statelessness, and problematic interpretation and application of legal provisions, which often create additional risks.

The status of stateless people from Ukraine in Poland thus remains highly vulnerable. The deficiencies of the Polish system to protect stateless people have been highlighted during the Ukrainian crisis and bear a direct detrimental impact on their situation. Without a statelessness determination procedure, a uniform definition of statelessness, and its coherent interpretation and application, a risk of unjustified exclusion from protection of those in need of it remains a constant threat.⁷²

Impact on Human Rights:

Poland's continued reluctance to accede to international treaties to protect stateless people and prevent statelessness, and its mixed efforts towards the prevention and reduction of statelessness, result in an inadequate legal framework which fails to protect stateless people against human rights violations enshrined in the ICCPR and to uphold children's right to a nationality (Article 24 ICCPR):

- The lack of definition of statelessness and of an effective SDP results in a heightened risk of arbitrary detention applied as an administrative measure during return procedures. HNLAC legal practice shows that, as a consequence, even if there is no reasonable prospect of removal of a stateless person - which in itself renders the detention arbitrary - the person may still be detained and the detention may later be prolonged;
- The current wording of Article 14 of the Polish Citizenship Act results in a risk of statelessness for certain categories of children born within the territory of Poland;
- The lack of a definition of statelessness, a procedure to determine statelessness and protect stateless people, and the inadequacy of existing pathways for the identification and regularisation of the status of stateless people, contributes to maintaining stateless people in an uncertain legal situation, marginalised, denied access to basic human rights and at risk of several rights violations.

⁷² K. Przybyśławska, Halina Nieć Legal Aid Center: Report: "Stateless Persons from Ukraine Seeking Protection in Poland", 2023, www.pomocprawna.org; ENS, 'Poland: Information for stateless people and those at risk of statelessness fleeing Ukraine', February 2024, <https://www.statelessness.eu/statelessness-ukraine-crisis>.

Recommendations:

- 1. Poland should accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**
- 2. Poland should improve the recording of statelessness in national statistics, including the harmonisation and definition of the statistical categories, by introducing a uniform definition of a stateless person in line with the 1954 Convention and ensuring its consistent interpretation.**
- 3. A dedicated statelessness determination procedure and protection status should be established in law, in line with the 1954 Convention and UNHCR guidance and good practice, including to grant stateless people a residence permit, right to work, study and facilitated naturalisation.**
- 4. The Act on Foreigners should include a clear safeguard against the detention of persons where no reasonable prospect of removal exists, and limit the risk of arbitrary detention of stateless people. A country of removal should be identified prior to the person being detained, and a person identified as stateless should be immediately released and referred to a procedure to fully determine their statelessness and grant protection status.**
- 5. All relevant authorities who may come into contact with stateless people (including the Office for Foreigners, Border Guard, and civil and birth registry officials) should be trained on statelessness and its identification.**
- 6. Poland should amend the Polish Citizenship Act to extend the safeguard against statelessness so that all children born on the territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of their parents.**
- 7. Poland should address and eliminate discriminatory policies and practice by the authorities that prevent children born to same-sex parents from acquiring a Polish passport or documentation.**
- 8. Special efforts should be made to ensure the protection of stateless people, people with undetermined nationality, and undocumented people from Ukraine who are not covered by temporary protection in Poland. Such efforts should include, but not be limited to, extending temporary protection to all people fleeing Ukraine regardless of nationality or residence status in Ukraine, identifying particular groups at risk of statelessness from Ukraine and providing information, legal assistance, and referral to international protection procedures.**