

MARCH 2023

Lithuania

Follow-up report to the UN Committee against Torture

*Issues related with migrants,
asylum seekers and immigration
detention*

SUBMITTED BY

Human Rights Monitoring
Institute and Global
Detention Project



Introduction

1. Pursuant to Article 14 of the Guidelines for follow-up to concluding observations, Human Rights Monitoring Institute (HRMI) and Global Detention Project (GDP) respectfully submit to the Committee an alternative follow-up report with regards to the recommendations, contained in Paragraph 12 of the Committee's Concluding Observations CAT/C/LTU/CO/4 on the fourth periodic report of Lithuania.
2. HRMI is a Lithuania-based non-governmental, not-for-profit human rights organization. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are effective in practice. HRMI conducts research, monitoring, evidence-based advocacy and awareness raising in various human rights areas, including the rights of migrants and asylum seekers.
3. GDP is a non-profit organization based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:
 - To promote the human rights of detained migrants, refugees, and asylum seekers;
 - To ensure transparency in the treatment of immigration detainees;
 - To reinforce advocacy aimed at reforming detention systems;
 - To nurture policy-relevant scholarship on the causes and consequences of migration control policies.
4. The report provides information on the latest developments and the current situation concerning the rights of migrants and asylum seekers, with a focus on relevant legislation and institutional policies and practices, affecting those rights, especially in the time of emergency situation which, as of writing of this report, was still in effect.

Follow-up information relating to paragraph 12 (a) of the concluding observations

12 (a) "Take measures to ensure that detention of asylum seekers, refugees and undocumented migrants, including in the framework of the border procedure, encompasses requisite safeguards against unlawful or arbitrary detention, and is used only when it is approved by a judicial order as a last resort and when it is necessary and proportionate; such detention should be used for as short a period as possible, the duration of which will be prescribed by law, and take place in adequate conditions;"

5. Art. 140⁸ (3) of the Law on Legal Status of Foreigners (hereinafter – Foreigners Law) provides that in times of war, state of emergency or extreme situation due to the large influx of people crossing into the country, non-citizens who enter irregularly (asylum seekers, migrants not seeking asylum, or individuals whose asylum applications have

been rejected), are to be accommodated in designated places without the right to freely move in the territory of the Republic of Lithuania.¹ This administrative measure can be applied for up to six months with the possibility of extension for another six months.² No individual decisions are issued and no judicial review is provided for by law for the initial six months period of such accommodation.

6. Numerous legal experts and judicial bodies have found that this administrative measure clearly amounts to deprivation of liberty, often in degrading circumstances. In practice, such accommodation meant that migrants and asylum seekers were placed in the premises of border guard stations, foreigners' registration and refugee reception centers without the right to freely leave the centers and, in some cases, without the possibility to move freely across the different sectors of the centers. The Parliamentary Ombudspersons' Office—after conducting monitoring visits in Kybartai foreigners' registration center³ (now closed) and Medininkai foreigners' registration center⁴ (now closed)—found that the conditions in the centers amounted to detention and degrading treatment. The Lithuanian courts have likewise ruled in a series of cases that accommodation at these facilities amounted to *de facto* detention.⁵ In these and other cases concerning such restriction of liberty, the courts found it to be unlawful and / or ungrounded and disproportionate.⁶ The European Committee for the Prevention of Torture, after its 2021 visit to the foreigners' registration centres in

¹ Republic of Lithuania, Law on the Legal Status of Foreigners No. IX-2206 (last amended on 17 March 2022, consolidated version valid as of 1 April 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ac2cfa50b06f11ecaf79c2120caf5094?jfwid=>

² Art. 140⁸ (9) of the law provides that in certain cases, when individual administrative decisions are issued by the Migration Department or State Border Guard Service (hereinafter – SBGS) to accommodate a foreigner without the right to freely move in the territory of the country, such decisions can be appealed to a district court in 14 days.

³ Parliamentary Ombudspersons' Office of the Republic of Lithuania's Report No. NKP-2021/1-4 on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of Interior, 24 January 2022, https://www.lrski.lt/wp-content/uploads/2022/01/Final_Ataskaita_Kybartai_2021.pdf

⁴ Parliamentary Ombudspersons' Office of the Republic of Lithuania's Report No. NKP-2022/1-1 on the Implementation of the Rights and Freedoms of Foreigners in Medininkai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of Interior, 7 July 2022, https://www.lrski.lt/wp-content/uploads/2022/07/Ataskaita_MURC_2022_FINAL.pdf

⁵ 31 March 2022 decision of the Supreme administrative court of Lithuania in the case No. A-1 804-502/2022; 5 May 2022 decision of the Supreme administrative court of Lithuania in the case No. A-2414-881/2022, <https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=40323ea5-cd4a-4e75-85f5-da3deddfb6a> ; 19 May 2022 decision of the Supreme administrative court of Lithuania in the case No. A-2595-602/2022.

⁶ 26 October 2022 decision of the Supreme administrative court in the case No. A-3969-968/2022; 26 October 2022 decision of the Supreme administrative court in the case No. A-3948-442/2022.

Kybartai, Medininkai and Pabradė, concluded that the situation at these sites amounted to detention.⁷

7. It is important to note that, as of writing of this report, the vast majority of people who crossed the Lithuania-Belarus border in the summer of 2021 have been released from the centers and their liberty is no longer restricted.⁸ The non-citizens in the centers currently live under different regimes: some are detained by judicial order or have alternatives to detention applied to them, such as reporting obligations to periodically return to the center; some have no restriction of their liberty and can freely leave the centers. However, the legal possibility of *de facto* detention for up to a year remains, and, to HRMI's knowledge, there are no immediate plans to revise this part of legislation.
8. In addition to the *de facto* detention provisions described above, non-citizens seeking asylum but who enter the country irregularly can be detained under Art. 140¹⁷ (2) of the Foreigners Law. The Court of Justice of the European Union found in the case of M.A., C-72/22 PPU that such provision contradicts EU asylum directives. There are currently amendments proposed to abolish this provision of the law.⁹ However, at the time of writing of this report the amendments have not been passed yet.

Follow-up information relating to paragraph 12 (b) of the concluding observations

12 (b) "Refrain from detention of families with children and vulnerable asylum seekers;"

9. Lithuania did not follow this recommendation concerning families, children, and vulnerable asylum seekers, who continued to be placed in *de facto* detention throughout 2021-2022. Appropriate living conditions for vulnerable adults and children in reception centers were mostly not provided.¹⁰ In 2022, the Ombudsperson indicated that some vulnerable people lived in *de facto* detention.¹¹ Within the

⁷ European committee on the prevention of torture and inhuman or degrading treatment or punishment, Report to the Lithuanian Government on the periodic visit to Lithuania carried out by the CPT from from 10 to 20 December 2021, No. CPT/Inf (2023) 01, <https://rm.coe.int/1680aa51af>

⁸ As of 1st of March 2023, there were 161 people left in the centres – 110 in Pabradė foreigners' registration centre and 51 in Rukla and Naujininkai refugee reception centres. Kaunodiena.lt, "Migrants leave Lithuania: Kybartai foreigners' registration centre is being closed", 1 March 2023, <https://m.kauno.diena.lt/naujienos/lietuva/salies-pulsas/migrantai-palieka-lietuva-uzdaromas-kybartu-uzsienieciu-registracijos-centras-1115771>

⁹ Republic of Lithuania, Draft Law No. XIVP-2385 on the Amendment of Articles 140(8), 140(12) and the Abolishment of Articles 140(11), 140(17) of the Law on the Legal Status of Aliens No. IX-2206, registered 13 January, 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/927284f0930d11edb55e9d42c1579bdf?positionInSearchResults=3&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>

¹⁰ 2022 Monitoring Report, Lithuanian Red Cross, December 2022, <https://redcross.lt/wp-content/uploads/2022/09/LRK-metine-stebesenos-ataskaita-2022.pdf>;

¹¹ Office of the Parliamentary Ombudspersons' report on the Implementation of the Rights and Freedoms of Foreigners in Medininkai Foreigners' Registration Centre.

foreigner reception centers, children had limited opportunities to go outside and were subject to the same rules as other foreigners or asylum seekers.¹² In some instances, children were separated from one of their parents.¹³ Furthermore, children could only leave the premises to attend school with some noted delays in schooling availability.¹⁴ The Ombudsperson found that Medininkai center—which is now closed—apart from being a *de facto* detention centre, was furthermore deeply unsuitable for families with children due to its location, lack of personnel, and having no special assistance in place for the different vulnerable groups.¹⁵ The Ombudsperson also reported that persons with disabilities, including limited mobility, lacked suitable assistance and support and were unable to move freely within the centers.¹⁶

10. Moreover, the Ombudsperson's report notes that each detention center had its unique screening system for identifying vulnerable persons rather than a uniform identification process, which affected the quality and consistency of assistance provided.¹⁷ This difference resulted in some migrants and asylum seekers not being considered vulnerable such as lone women or sometimes people with physical limitations.¹⁸ In some cases, vulnerability assessments were not performed in Kybartai, which is now closed, and the center's personnel were not given vulnerability trainings.¹⁹ In addition, migrants' accounts indicate incidents where the State Border Guard Service (SBGS) did not take individuals' vulnerabilities into account.²⁰ Screening of vulnerabilities based on previous experiences of trafficking, torture or psychological abuse also appeared to not be performed.²¹

11. Some improvements have been noted, such as offering accommodation in Rukla and Naujininkai to vulnerable adults, which is more suited to their protection and assistance needs, and improving the centers' facilities over time.²² Moreover, schooling for children in these centers was reported to be adequate. Nevertheless, the planning of Rukla is not ideal for vulnerable persons due to having lots of concrete, non-separated toilets, and only one local shop for necessities.²³ Overall more

¹² 2022 Monitoring Report, Lithuanian Red Cross.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Report "Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention", Office of the Equal Opportunities Ombudsperson, 30 December 2022, https://lygybe.lt/data/public/uploads/2022/12/na_2022-12-12_nepriklausomos-stebesenos-ataskaita.pdf?fbclid=IwAROpkNx00vC76-7C7Twa1SS-fkXMGrJz-LUjttMeBGZPtcY7XNXSPobbtUY;

¹⁸ Office of the Parliamentary Ombudspersons' report on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners' Registration Centre.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² 2022 Monitoring Report, Lithuanian Red Cross.

²³ Ibid.

vulnerability identification checks are needed, and children need to be protected against family separation.

Follow-up information relating to paragraph 12 (c) of the concluding observations

12 (c) “Take the measures necessary to ensure appropriate reception conditions in accommodation sites for asylum seekers and refugees, including appropriate accommodation, adequate and sufficient food, clothes, other non-food items and psychosocial and health-care services, taking into account the specific needs of vulnerable persons;”

12. Reception conditions in accommodation sites have improved, mainly due to the significantly decreased number of new arrivals because of the push-back policy. Conditions in foreigners' registration center in Pabradė, and Naujininkai and Rukla reception centers have improved with respect to access to psychologists, doctors and medical treatments, access to schooling, availability of activities for adults, and improvements in catering.²⁴ Previously noted issues—including lack of space and lack of access to sanitary facilities—have also improved.²⁵ No systemic issues were noted in these reception centers regarding material conditions.
13. Reports on Medininkai and Kybartai centers, however, indicated that the material conditions in these centers did not meet the minimum standards of the EU Reception conditions directive.²⁶ These include: space per person, number of showers and restrooms, hygiene requirements, number and quality of working appliances, and lack of furniture.²⁷
14. In Pabradė foreigners' registration center and Rukla and Naujininkai reception centers, the Ombudsperson's report noted longer waiting times for health care and treatment; insufficient variety of food and lack of independent cooking facilities; lack of sufficient hygiene products; and limited available information on internal procedures.²⁸ However, the main issue was a lack of available information on foreigners' application status, with little to no communication or response to queries from the Migration Department.²⁹ This uncertainty resulted in people being unaware, stressed, and untrusting of the centers' administration regarding their legal status.³⁰ Overall, the

²⁴ Ibid.

²⁵ Ibid.

²⁶ Office of the Equal Opportunities Ombudsperson's report “Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention”.

²⁷ Office of the Parliamentary Ombudspersons' report on the Implementation of the Rights and Freedoms of Foreigners in Medininkai Foreigners' Registration Centre.

²⁸ 2022 Monitoring Report, Lithuanian Red Cross.

²⁹ Ibid.

³⁰ Ibid.

conditions seem to be improving in all centers, but a significant factor is the decreasing numbers of migrants arriving and staying in the country.

Follow-up information relating to paragraph 12 (d) of the concluding observations

12 (d) Implement alternative reception arrangements in local communities, notably for vulnerable asylum seekers and refugees, and further develop the reception system, based on coordinated contingency planning, to ensure that the accommodation capacity, support and services are sufficient and adjusted to the needs to respond effectively in situations where larger numbers of asylum seekers and refugees arrive during a short period of time;

15. Since the CAT review in 2021, there have been no efforts to create appropriate, non-detention reception arrangements in local communities, which could enable the country to cope better with large numbers of arrivals in a short period of time. The Ombudsperson's report stated that no appropriate reception conditions were available to vulnerable persons such as pregnant or breastfeeding women.³¹ Due to the *de facto* mass detention of all arrivals, appropriate reception methods are not sufficiently explored and detention decisions on arrival are not reviewed. A detailed vulnerability and risk assessment could help the authorities speedily arrange appropriate reception arrangements for those in need.³²
16. Some non-citizens who were placed in the centres without the right to freely move in the territory of the country, were not confined to the centres. The Kybartai center, now closed, for example, allowed migrants to move freely with mandatory 48 or 72-hour reporting to the center subject to review of their cases.³³ The right for free movement was usually granted to refugees from Belarus.³⁴ Temporary local accommodation sites were also adapted for Ukrainian refugees, offering interim housing in local communities.³⁵ Some migrants receive a right to work 12 months after their registration, but without having a residence permit there are many obstacles to exercising this right.³⁶ Since May 2022, some migrants have been able to move freely within the country and seek independent housing following an individual court

³¹ Office of the Equal Opportunities Ombudsperson's report "Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention".

³² Report "Options for governments on open reception and alternatives to detention", UNHCR, 2015, <https://www.unhcr.org/553f58719.pdf>

³³ Office of the Parliamentary Ombudspersons' report on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners' Registration Centre.

³⁴ 2021 Monitoring Report, Lithuanian Red Cross, December 2021, https://redcross.lt/wp-content/uploads/2022/09/2021_metine_lrk_stebesenos_ataskaita.pdf;

³⁵ Ministry of the Interior, Ukrainian refugee reception procedure, 24 February 2022, <https://vrm.lrv.lt/en/news/ministry-of-the-interior-ukrainian-refugee-reception-procedure>;

³⁶ Office of the Equal Opportunities Ombudsperson's report "Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention".

hearing.³⁷ Naujininkai reception center also offers accommodation within the city with integrated city-wide services.³⁸

17. But proposed UNHCR suggestions for appropriate reception facilities are not available, such as independent community living. Modified reporting conditions are only obtainable upon an individual court decision, usually no earlier than 12 months after arrival.

Follow-up information relating to paragraph 12 (e) of the concluding observations

12 (e) Conduct a thorough, prompt and independent investigation into all instances of alleged torture and ill-treatment in places of immigration detention and accommodation sites for asylum seekers, refugees and undocumented migrants;

18. To our knowledge, no independent investigations have been conducted to inspect allegations of ill-treatment or torture in places of immigration detention or accommodation sites for asylum seekers and migrants. The SBGS is reported to have rebutted migrants' claims of ill-treatment and abuse and asserted that all its actions are carried out without force.³⁹ According to the official government response, only one instance of publicly known judicial preliminary investigation has been initiated, which is the case of sexual coercion performed by a psychologist.⁴⁰
19. However, reports and comments published by NGOs visiting the centers still indicated non-isolated instances of physical and psychological abuse in 2022.⁴¹ Most reports of abuse were noted in Medininkai, which is now closed, due to the relocation of remaining foreigners to other sites.⁴² Although even in 2022, at least 16 persons claimed ill-treatment by the officers, including being placed in solitary confinement, strip searches, and physical beatings.⁴³ In response to similar claims, SBGS

³⁷ Ibid.

³⁸ 2021 Monitoring Report, Lithuanian Red Cross.

³⁹ 15min.lt, "Foreigner complaints about the violence of Lithuanian officials in the Polish press", 12 November 2021, <https://www.15min.lt/naujiena/aktualu/lietuva/lenkijos-spaudoje-foreigneru-skundai-del-lietuvos-pareigunu-smurto-56-1595272>;

⁴⁰ 15min.lt, "A psychologist suspected of sexual abuse against foreigners was suspended and left the party", 02 May 2022, <https://www.15min.lt/naujiena/aktualu/seksualine-prievarta-itariamamas-psichologas-nusalintas-nuo-pareigu-pasitrauke-is-partijos-55-1673304>;

⁴¹ Amnesty.org, "Lithuania: Pushbacks, illegal detention, deception and abuses against refugees and foreigners", 27 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/lithuania-pushbacks-illegal-detention-deception-and-abuses-against-refugees-and-foreigners/>;

⁴² LRT.lt, "Lithuania closes Medininkai Foreigner facility as last foreigners moved", 19 August 2022, <https://www.lrt.lt/en/news-in-english/19/1762930/lithuania-closes-medininkai-foreigner-facility-as-last-foreigners-moved>;

⁴³ Office of the Equal Opportunities Ombudsperson's report "Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention".

representatives often assert that training, instructions, and procedures are in place that address breaches of administrative duties.⁴⁴ Although the Ombudsperson's report suggests that there are inadequate procedures in place to prevent and report abuse.⁴⁵

Follow-up information relating to paragraph 12 (f) of the concluding observations

12 (f) Ensure access to information on asylum procedures and legal aid without discrimination and inform asylum seekers about decisions on their asylum applications in a language they understand, including in times of emergency;

20. The Ombudsperson monitors at the Kybartai foreigners' registration center found that migrants and asylum seekers were not appropriately informed of their rights and obligations, including their right to access legal aid.⁴⁶ While there was a brief document on the rights of foreigners at the center, the monitors concluded that there was insufficient information on the content of those rights or how to exercise them. For example, the list of rights did not include the right to receive information related to the examination of their asylum applications. According to the Ombudsperson report, lack of understanding of their status and lack of information thereof was one of the most common complaints of detainees in the center. According to detainees, they did not receive necessary information either from the Migration Department, or from the center's administration.
21. During the visit, asylum seekers also often complained that they received their decisions on asylum only in Lithuanian language. At the end of the written decision a summary is added in Lithuanian, English and Russian languages, however, this summary concerns only the essence of the decision without its motives. The asylum seekers claimed that the motives of the decisions were not being interpreted to them.
22. The information document in the Kybartai center stated that the migrants have a right to free legal aid, however, no additional information on how to request legal aid, the terms and form of legal assistance was provided. The Ombudsperson monitors found that the information provided was insufficient for asylum seekers to effectively access their right to receive state guaranteed legal aid.
23. In its 2022 report on access to asylum procedures in the foreigners' centers, the Lithuanian Red Cross found instances when:
 - 1) Requests for asylum were not accepted or registered;

⁴⁴ LRT.lt, "Prosecutors have opened an investigation into possible long-term sexual abuse of foreigners at one VSAT foreigner registration center", 02 14 2023, <https://www.lrt.lt/naujienos/lietuvoje/2/1679317/prokurorai-pradejo-tyrima-del-galimo-ilgalaikio-Foreigneru-seksualinio-prievartavimo-viename-vsats-uzsienieciu-registravimo-centre>;

⁴⁵ Office of the Equal Opportunities Ombudsperson's report "Crossing the border between Belarus and Lithuania: ensuring equal opportunities for persons in places of detention".

⁴⁶ Office of the Parliamentary Ombudspersons' report on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners' Registration Centre.

- 2) Migrants and asylum seekers did not receive sufficient information on the relevant procedures, including information on their legal status and the progress of their asylum applications, as well as on the possibility to actively participate in the procedure;
 - 3) Familiarization with the asylum decisions was insufficient, the majority of asylum seekers claimed they did not understand the decisions;
 - 4) Individuals were not informed of the outcome of their requests for legal aid, and did not know whether the asylum decision had been appealed; only very few respondents were in contact with their state guaranteed lawyer, the majority met the lawyer for the first time during the court hearing; asylum seekers did not receive court decisions from their lawyers and did not receive responses when they contacted their lawyers.⁴⁷
24. In October-December 2022, HRMI conducted visits to four centers – Naujininkai, Rukla, Pabradė and Kybartai, and interviewed a total of 18 migrants and asylum seekers. Some of them complained that they did not have any information on the status of their asylum applications and had not received any response from the Migration Department, or any detailed response. Some had successful appeals with the court ordering fresh examination of their asylum applications,⁴⁸ however, there was a delay from the Migration Department in issuing new decisions, and the respondents were not informed about when they should expect these decisions.

Follow-up information relating to paragraph 12 (g) of the concluding observations

12 (g) Ensure that all asylum seekers, including those arriving in an irregular manner and in times of emergency, have the right, in law and in practice, to apply for asylum and to remain on the territory pending the outcome of the asylum procedure;

25. Under the current legal regulation and practice, applications from the majority of asylum seekers who crossed the border irregularly are not being accepted. The Foreigners Law provides that applications for asylum can be submitted only at the international border checkpoints, to the Migration Department in case of regular entry, and to the Lithuanian diplomatic missions abroad. According to the official statistics, since the instatement of the so-called “returns” policy in August 2021, there were 19 672 push-backs at the border or returns from the Lithuanian territory to Belarus.⁴⁹ In 2022, there were 11 211 push-backs and returns, and since the beginning of 2023 – 357 cases of returns / push-backs. Information on the demographics of the

⁴⁷ 2022 Monitoring Report, Lithuanian Red Cross.

⁴⁸ In such a case, when a fresh examination of the asylum application is ordered by a court, the new decision must be issued within 3 months of the decision of the court coming into effect.

⁴⁹ Official statistics from the State Border Guard Service, <https://vsat.lrv.lt/lt/naujienos/neileistu-neteisetu-migrantu-statistika>

people who have been pushed back or returned is not being published and likely is not collected.⁵⁰

26. According to the Lithuanian Red Cross 2022 monitoring report,⁵¹ asylum applications from citizens of Belarus and the Russian Federation were generally accepted, including in cases of irregular entry. However, people arriving irregularly from African, Middle Eastern and Asian countries were returned to the territory of Belarus, except for a few cases where asylum applications were accepted because of a critical medical condition or because of interim measures applied by the European Court of Human Rights.

27. Currently, there is a draft amendment to the Foreigners Law proposed by the Ministry of Interior, that would provide for the possibility to file asylum applications to the State Border Guard Service, including in case of irregular entries.⁵² However, at the same time as this amendment is being considered, other amendments to the Law on State Border and its Protection are being proposed which would legalize push-backs in times of extreme situation due to a mass influx of foreigners.⁵³

Follow-up information relating to paragraph 12 (h) of the concluding observations

12 (h) Ensure that asylum requests receive appropriate consideration by the competent authorities and fair treatment is guaranteed at all stages of asylum proceedings, including an opportunity for an effective and impartial review by an independent decision mechanism, with an automatic suspensive effect;

28. In 2022, the Lithuanian authorities received 939 applications for asylum.⁵⁴ Out of the cases examined in 2022, only 16 Iraqi citizens were granted asylum, whilst 247 were

⁵⁰ Kaunodiena.lt, “In light of concerns regarding informational vacuum at the border, the SBGS representative claims that there are no secrets”, 25 August 2022, <https://m.kauno.diena.lt/naujienos/lietuva/salies-pulsas/nuogastaujant-del-informacinio-vakuomo-pasienyje-vs-atstovas-tikina-jokiu-paslapciu-nera-1092780>

⁵¹ 2022 Monitoring Report, Lithuanian Red Cross.

⁵² Republic of Lithuania, Draft Law No. XIVP-2385 on the Amendment of Articles 140(8), 140(12) and the Abolishment of Articles 140(11), 140(17) of the Law on the Legal Status of Aliens No. IX-2206, registered 13 January, 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/927284f0930d11edb55e9d42c1579bdf?positionInSearchResults=3&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>. According to the Ministry of Interior, applications for asylum from people who are present in the border zone area in the territory of the country will not be accepted, even after the amendments to Foreigners Law, because legally they are considered as not having “entered” the territory of Lithuania.

⁵³ Republic of Lithuania, Draft Law on the Amendment of Sections I and III and Articles 4, 10, 16, 18, 23, 26 and the Supplementation with Article 23(1) and New Section IX of the Law on State Border and its Protection, registered on 13 January 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/31695270930c11edb55e9d42c1579bdf?positionInSearchResults=4&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>

⁵⁴ 2022 Annual Report on Migration, Migration Department under the Ministry of Interior, https://migracija.lrv.lt/uploads/migracija/documents/files/2022_Migracijos_metrastis.pdf; in 2022, 316 persons received refugee status, 21 – subsidiary protection and 548 were denied asylum. Of those granted asylum in 2022 (refugee status or subsidiary protection) 206 were citizens of Belarus, 35 - from Afghanistan, 25

denied. Also, none of the applicants from Nigeria (22 cases), Cameroon (29 cases), Sudan (8 cases) or Democratic Republic of Congo (39 cases) received asylum in 2022. None of the 6 Mali citizens, whose applications have been examined in 2022, received asylum, although the 2022 EU recognition rate for citizens of Mali was 70 percent. The overall recognition rate in Lithuania in 2022 was 31 percent, whereas in 2021 it reached only 16 percent (451 cases of granted asylum and 2768 cases denied).⁵⁵ The recognition rate for Iraqi citizens' claims in 2021 (who constituted the majority of people who crossed the border irregularly in 2021) was 0.36 percent (7 cases of granted asylum and 1950 cases denied).

29. According to Art. 139 (3) of the Foreigners Law, the enforcement of a decision appealed against shall be suspended where the decision appealed against refuses to grant asylum to a foreigner, except in cases when the decision is taken after examining an application for asylum as to substance as a matter of urgency (*liet. iš esmės skubos tvarka*). In such a case, the enforcement of a decision can be suspended only when the court issues interim measures (*liet. reikalavimo užtikrinimo priemonės*). The majority of the asylum requests filed by applicants who arrived irregularly in the summer of 2021, have been examined under this accelerated procedure.⁵⁶ As the European Council for Refugees and Exiles (ECRE) noted in its 2021 report, the accelerated examination was previously allowed by Article 81 (2) and Article 76 (4) of the Foreigners Law, but it was reserved for an exhaustive set of situations (Art. 76(4) of the Law); now it was being applied to those who arrived from Belarus. However, HRMI has no information that orders of expulsion have been enforced whilst judicial appeal procedures were ongoing.
30. On the 13th of December 2022, 7 citizens of Nigeria were deported from Lithuania after their subsequent asylum applications were rejected.⁵⁷ Although under the law there was a possibility to appeal the decisions in 7 days to the first instance court and request interim measures to suspend the expulsion orders, there was no practical possibility to use this right, as the persons were boarded on the plane on the evening of the day they received the decisions. The Government argued that it enforced the decisions on the initial requests for asylum, the appeals on which had been rejected by the final instance court. However, the Migration Department has accepted and examined the subsequent applications, therefore the persons in question could still have been considered asylum seekers with the legal right to appeal the decisions on their

– from Syria, 21 – from Russian Federation, 7 – from Turkey, 6 – from Yemen, 6 – from Eritrea, 5 – from South Sudan, 5 – from Somalia; less than 5 from citizens of various other countries.

⁵⁵ 2021 Annual Report on Migration, Migration Department under the Ministry of Interior, [https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_sk_elbimui\(3\).pdf](https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_sk_elbimui(3).pdf)

⁵⁶ European Council for Refugees and Exiles, Extraordinary Responses: legislative changes in Lithuania 2021, <https://ecre.org/wp-content/uploads/2021/09/Legal-Note-11.pdf>

⁵⁷ LRT.lt, “Night time deportation of a group of migrants to Nigeria caused passions and a question: was such deportation legal?”, 14 December 2022, <https://www.lrt.lt/naujienos/lietuvoje/2/1844257/naktinis-migrantu-grupes-isskraidinimas-i-nigerija-sukele-aistras-ir-klausima-ar-tokia-deportacija-teiseta>

subsequent applications, as well as the right to request interim measures from the court.

Follow-up information relating to paragraph 12 (i) of the concluding observations

12 (i) Ensure unhindered access of the national human rights institution, nongovernmental organizations and journalists to the border zones affected by the emergency situation.

31. Under the current regulation, a person's arrival and presence in the border zone is possible only with the permission of the State Border Guard Service, which compiles a list of persons having the right to be present or conduct activities in the border zone area.⁵⁸ Persons present in the border zone without such permission receive administrative fines. Currently one non-governmental organization (Border Group)⁵⁹ is active in the border zone area. The organization provides humanitarian aid to people stranded at the border on Lithuanian territory. Reportedly, the organization does not have permission from the State Border Guard Service and the volunteers are sometimes issued administrative fines. Their presence in the border zone and humanitarian work is regularly criticized by the State Border Guard Service. One of the representatives of the State Border Guard Service in November 2022 stated to the media: "They have their own objectives which purposefully or not align with the goals of the Belarusian regime. That is, that as many illegal migrants as possible would enter Lithuania, that Lithuania would be flooded with illegal migrants."⁶⁰ During a confrontation between the volunteers and SBGS regarding a group of stranded migrants, one of the volunteers reportedly was kicked on the legs by SBGS officer who thought the volunteer was an irregular migrant.⁶¹ Harsh public criticism of the volunteers' work and even accusations of anti-state activities have been expressed by other high-level public officials, such as the Deputy Minister of Interior and the

⁵⁸ Official website for filing applications for permissions to be in the border zone area:

<https://www.lietuva.gov.lt/lt/asmenu-irasymas-i-asmenu-turinciu-teise-buti-valstybes-sienos-apsaugos-zonoje-pasienio-juostoje-pasienio-vandenyse-kuriu-vandenimis-arba-krantais-eina-isores-siena-sarasa-77;11185.html>

⁵⁹ Border Group's page: <https://www.facebook.com/sienosgrupe>

⁶⁰ Delfi.lt, "Saviours of migrants left shaken after the confrontation with officers; witnessed what was really happening in the border zone forests", 12 November 2022, <https://www.delfi.lt/news/daily/lithuania/migrantu-gelbetojai-po-susidurimo-su-pareigunais-liko-sukresti-pamate-kas-isties-vyksta-pasienio-miskuose.d?id=91703053>

⁶¹ Delfi.lt, "Saviours of migrants left shaken after the confrontation with officers; witnessed what was really happening in the border zone forests", 12 November 2022, <https://www.delfi.lt/news/daily/lithuania/migrantu-gelbetojai-po-susidurimo-su-pareigunais-liko-sukresti-pamate-kas-isties-vyksta-pasienio-miskuose.d?id=91703053>

Chairman of the National Security and Defence Committee.⁶²

32. In December 2021, a criminal investigation was initiated by the SBGS into the activity of the Border Group, accusing them of alleged migrant smuggling.⁶³ However, in April 2022, the prosecution office discontinued the investigation on the ground that no criminal activity has been committed.⁶⁴
33. Currently, there are draft amendments to the Law on the State Border and its Protection pending, which are to be considered by the Parliament in its 2023 spring session.⁶⁵ The amendments would provide that in times of extreme situation due to mass influx of foreigners, access to the border zone area would only be possible subject to the SBGS's permission to be present in this area. The obligation to obtain permission would not be applicable, *inter alia*, to persons carrying out the functions of state or municipal institutions. However, no exceptions are provided for non-governmental and humanitarian organizations or journalists, that is, they would need to get individual permissions from the SBGS. At the time of writing of this report, the 3rd of July 2021 Government Resolution announcing the state level extreme situation due to mass influx of foreigners was still in effect.⁶⁶

34. Recommendations:

- a) The Lithuanian Government should abolish legal provisions allowing for mass automatic long-term detention of non-citizens—including in times of emergency—and ensure that detention is used only as a measure of last resort, by a court order and for the shortest term possible, in line with long-standing Committee recommendations that people in need of international protection should “not be detained without proper legal justification and safeguards”; and their “detention

⁶² World Organisation Against Torture, “Lithuania: criminalisation of solidarity on the rise as people on the move are pushed back”, 21 April 2022, <https://www.omct.org/en/resources/statements/lithuania-criminalisation-of-solidarity-on-the-rise-as-people-on-the-move-are-pushed-back>

⁶³ LRT.lt, “18 migrants are not allowed entry to Lithuania in the last 24 hours, a criminal investigation was launched into the activity of Border Group”, 30 December 2021, <https://www.lrt.lt/naujienos/lietuvoje/2/1572666/per-para-i-lietuva-neileista-18-migrantu-del-sienos-grupes-veiklos-pradetas-ikiteisminis-tyrimas>

⁶⁴ 15min.lt, „Volunteers who helped migrants did not commit a crime: prosecution office has terminated the investigation“, 26 April 2022, <https://www.15min.lt/naujiena/aktualu/lietuva/migrantams-padeje-savanoriai-nusikaltimo-nepadare-prokuratura-nutrauke-tyrima-56-1671586>

⁶⁵ Republic of Lithuania, Draft Law on the Amendment of Sections I and III and Articles 4, 10, 16, 18, 23, 26 and the Supplementation with Article 23(1) and New Section IX of the Law on State Border and its Protection, registered on 13 January 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/31695270930c11edb55e9d42c1579bdf?positionInSearchResults=4&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>

⁶⁶ Republic of Lithuania, Government Resolution No. 517 on the Announcement of State-Level Extreme Situation and the Appointment of the Head of Operations of Extreme Situation, 2 July 2021, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059?jfwid=-11rmuoi8dm>

- should always be an exceptional measure based on an individual assessment and subject to regular review.”⁶⁷
- b) All people placed in immigration detention should be provided with “fundamental guarantees and safeguards,” as stipulated by the Committee in its General Comment No. 4, including the provision of “legal, medical, social and, when necessary, financial assistance as well as the right to a recourse.”⁶⁸ Detainees should be provided with information on their legal status and their rights, including the right of access to legal aid, in a manner which enables them to exercise those rights in practice; accessibility and quality of legal aid should be guaranteed.
 - c) The Government should ensure the legal and practical possibility for people entering irregularly and who are present in the territory of Lithuania to submit asylum applications and to remain in Lithuania whilst their asylum applications are considered, as per its obligations under the UN Refugee Convention.
 - d) To ensure transparency in the treatment of all people in border zones, the Government should allow non-governmental organisations, international organizations and journalists to have unhindered access to border zone areas, including in times of emergency, without requiring them to obtain individual permits.
 - e) The Government should ensure that there is a uniform vulnerability identification process and that more thorough vulnerability identification checks are performed upon arrival, including screening for vulnerabilities based on previous experiences of trafficking, torture or psychological abuse, in line with standards established by the European Committee for the Prevention of Torture (CPT).⁶⁹
 - f) In line with international standards children and their families should never be detained for migration-related reasons. In their joint General Comment (No. 4/2017), the Committee on the Rights of the Child and the Committee on Migrant Workers ruled that the detention of children for migration-related reasons is an inherent violation of children’s human rights and must be abolished and prohibited by law. Moreover, it is always in the best interests of the child to remain with their family and families should not be separated for the purposes of migration-related detention. Instead, non-custodial solutions must be found for children and their families to be cared for in the community
 - g) All non-citizens placed in *de facto* or *de jure* detention must be provided adequate medical care throughout the duration of their detention, including medical screenings upon entry and ongoing for the entire detention period, in line with

⁶⁷ CAT, GC No.4 (2017) Art.3, §12.

⁶⁸ CAT, GC No.4 (2017) Art.3, §41.

⁶⁹ CPT, “Immigration detention” (2017) §10.

the medical recommendations issued by the World Health Organisation (WHO) in its 2022 immigration detention healthcare implementation guide.⁷⁰

- h) Appropriate, non-detention reception arrangements in local communities should be created, which could enable the country to better cope with large numbers of arrivals in a short period of time.
- i) Independent and thorough investigations into allegations of ill-treatment or torture in places of immigration detention or accommodation sites for asylum seekers and migrants should be carried out and procedures enacted to prevent and report abuse.
- j) There is an urgent need for more transparency in the use of both *de jure* and *de facto* detention measures, including the numbers of people subjected to such measures. The Government must provide up-to-date and disaggregated statistics on the numbers of people placed in all forms of migration-related detention, including: data about the numbers of people being subjected to both *de facto* and *de jure* detention measures, broken down by day, month, and year statistics; the demographics of detainees; the nationalities of detainees; a full list of facilities used for both *de facto* and *de jure* detention measures; and legal grounds for each detention measure.

⁷⁰ WHO, “Addressing the health challenges in immigration detention, and alternatives to detention” (2022), Chp. 3.3, p 25.