



## LITHUANIA

## JOINT SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

95<sup>TH</sup> SESSION – JANUARY/ FEBRUARY 2024

## ISSUES RELATED TO THE IMMIGRATION DETENTION OF CHILDREN

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### **ABOUT THE GLOBAL DETENTION PROJECT**

The Global Detention Project (GDP) is committed to ending arbitrary and harmful migration-related detention practices around the world, and to ensuring respect for the fundamental human rights of all migrants, refugees, and asylum seekers. To achieve this, we seek to:

- Increase public knowledge and awareness of immigration detention policies.
- Expand coverage of immigration detention by human rights monitoring bodies and other international agencies.
- Expand partnerships with local and international civil society organisations working to end arbitrary and harmful immigration detention practices.
- Strategically target research and advocacy so that it effectively challenges arbitrary and harmful detention laws and policies.

### **ABOUT THE HUMAN RIGHTS MONITORING INSTITUTE**

The Human Rights Monitoring Institute (HRMI) is a Lithuania-based non-governmental, not-for-profit public advocacy organization with a mission to strengthen an open and democratic society by contributing to the protection and fostering of human rights and freedoms. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws, policies and practices with international human rights obligations and working to ensure that rights are real and effective in practice.

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## Joint Submission to the UN Committee on the Rights of the Child

# 95<sup>th</sup> Session - January/ February 2024

## **Issues Related to the Immigration Detention of Children**

The Global Detention Project (GDP) and the Human Rights Monitoring Institute (HRMI) welcome the opportunity to provide information relevant to the fifth and sixth periodic review of Lithuania with respect to the implementation of the UN Convention on the Rights of the Child during its 95th session.

This submission focuses on the state party's laws and practices concerning detention of children for immigration-related reasons and is made in light of the Committee on the Rights of the Child's (CRC) authoritative General Comment No. 5 on migrants' rights to liberty and freedom from arbitrary detention, as well as the joint CRC/Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) General Comment No. 23 (2017)/No. 4 (2017) on "State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return."

### 1. CONTEXT

- 1.a In recent years, Lithuania has faced growing pressures on its borders, including in particular its shared border with Belarus, as the numbers of undocumented border crossers has grown. Lithuania has accused Belarus of using vulnerable migrants and asylum seekers as political pawns in its ongoing spat with the EU by pushing them across the border into Lithuania and other neighbouring countries. Previously, in June 2021, the EU had imposed sanctions on Belarus over an "escalation of serious human rights violations and the violent repression of civil society, democratic opposition and journalists." In response, Belarus stated that they would allow migrants to cross into Lithuania, which subsequently reported a significant increase in the numbers of people crossing the Lithuania-Belarus border.
- 1.b As the number of people arriving at Lithuania's border increased, Lithuanian lawmakers adopted new legislation allowing authorities to detain for six months all migrants and asylum seekers arriving at a time of martial law or state of emergency, or a state of emergency due to the mass influx of foreigners. As a result, thousands of migrants and asylum seekers were detained in Lithuania, including children. As of mid-August 2021, 4,110 people had been detained at the Lithuanian border (2,882 detained in July alone), compared to 81 apprehended during all of 2020. In 2022, amendments to the Law on the Legal Status of Aliens (which entered into force on 1 January 2022) provided for such de facto detention for up to 12 months.
- **1.j** Until 2021, Lithuania operated one immigration detention facility: the Pabradė Detention Centre (also known as the Foreigners Registration Centre). This facility

has attracted widespread criticism for many years due to its poor conditions, repeated allegations of disproportionate use of force, and over-crowding. In 2022, authorities announced that they would be building a "Migrant Multifunctional Centre" on the territory of the facility. Two new buildings are to be constructed for detaining foreigners in improved living conditions. The builds will include sports, employment, and prayer rooms, as well as living rooms with separate sanitary facilities, kitchens, a canteen, a gym, children's rooms, and offices for psychologists and social workers.

- 1.k Following the arrival of large numbers of irregular migrants in 2021, authorities established two additional detention facilities. In Medininkai, a camp made of modular houses was set up (Medininkai Foreigners Registration Centre), and 900 people were reported to be detained here during at the height of the crisis. In mid-August 2022, migrants who remained in the facility were moved to other centres, and the facility was closed and dismantled. Vulnerable groups in the facility–namely groups with children, especially infants–were moved to a reception centre in the former Vilnius Hostel. This centre was guarded by police officers, and police patrols in the surrounding streets were also reinforced.
- **1.I** On 20 September 2021, authorities also opened the Kybartai Alien Registration Centre. Initially, an estimated 700 male migrants were confined here–most of whom had been moved from a tent camp in Rūdninki. This centre was closed in March 2023.
- **1.m** As of January 2022, Lithuania also operated two Refugee Reception Centres, managed by the Ministry of Social Security and Labour. These were located in the village of Rukla (central Lithuania) and Naujininkai (in Vilnius). As of early 2022, these centres were de facto detaining several thousand foreigners who had irregularly crossed the border with Belarus in the second half of 2021.
- 1.n The reception centres primarily accommodate foreigners who are vulnerable persons. Vulnerable persons are defined as persons with special needs (e.g. a minor, a disabled person, a person over 75 years of age, a pregnant woman, a single parent with minor children, a person with mental and behavioural disorders, a victim of trafficking in human beings, or a person who has been subjected to torture, rape, or other forms of serious psychological, physical, or sexual violence).
- 1.0 Non-citizens who apply for asylum at the border and are subject to accelerated asylum procedures may be held at border crossing points and in transit zones for up to 28 days. According to UNHCR, the border procedure may fall short of international standards because it does not have sufficient safeguards against unlawful or arbitrary detention. According to the Ombudsman, the State Border Guard Service oversees 70 facilities where non-citizens may be detained in the court of border procedures.<sup>vi</sup>
- 1.p In the face of this "migration crisis," it became evident that the country was unprepared to address the challenges posed by the migration phenomenon—both in the short and long term. Despite efforts to characterise the crisis as a "well-managed hybrid attack," it is crucial to acknowledge the numerous human rights violations that occurred during the period. Individuals' rights were infringed upon both at border crossings, where they were turned away, and within Lithuania, where fundamental rights and freedoms were withheld from non-nationals for an extended duration—amongst them, children.

#### 2. LEGAL AND REGULATORY FRAMEWORK

- **2.a** The Law on the Legal Status of Foreigners regulates the entry, stay, and departure of non-citizens from Lithuania, including pre-removal detention.
- 2.b In 2021, following the declaration of an "emergency situation" due to the "mass influx" of migrants and asylum seekers beginning in July, the Lithuanian Parliament passed several amendments to the Law on Foreigners. These amendments included denying non-nationals the right to seek and access asylum, and permitting automatic mandatory detention for all irregular arrivals.
- 2.c On 7 June 2023, the country's Constitutional Court ruled that some of the provisions in the Law on Foreigners—which require asylum seekers to stay at specified places for six months without being granted the right to move freely within the territory of Lithuania and without a competent authority having made a decision which can be appealed in front of a court—is contrary to the country's Constitution.
- 2.d Since this ruling, authorities have been preparing a new draft law which amends those articles found to be unconstitutional. According to the draft law, the Migration Department will be responsible for decisions related to asylum seekers, and the State Border Guard Service will be responsible for irregular migrants. The draft also provides for an individual assessment of each asylum seeker's accommodation case. In particular, any circumstances that would render the asylum application unfounded or inadmissible, as well as any circumstances that would protect an individual from movement restrictions (such as their age, state of health, and family situation) are to be considered. If these circumstances are established, asylum seekers will be accommodated without restricting their freedom of movement. The draft law establishes a procedure for appealing against the accommodation decision, which must be done within 14 days to a district court. Viii
- 2.e The Law on Foreigners does not specifically prohibit the detention of children. Until 2015, the country's legislation required authorities to grant a specific detention alternative to unaccompanied children. Under the (now repealed) Article 115(2)(3) of the Foreigners' Law, unaccompanied minors were entrusted to a relevant social agency and accommodated in the Rukla Refugee Reception Centre. This alternative was generally applied and unaccompanied children were generally not detained. Today, however, the country's legislation allows the detention of both accompanied and unaccompanied children.
- 2.f According to the Draft Law amending the Law on Foreigners, unaccompanied minors for whom there is reasonable doubt regarding age may be detained until the age of the minor is established. This detention period would be permitted to last for 28 days from the day that they are registered in the Lithuanian Migration Information System. VIII
- 2.g Age Determination: Lithuania, like other European countries, conducts age determination assessments. The country relies on radiographic exams, lacks interdisciplinary collaboration, and lacks appeal provisions. Out of 212 tests, minority status was confirmed in only 29 cases. Despite legal requirements for consent, in the investigation carried by the Ombudsperson for the Protection of the Children's Rights it was found inconsistent adherence to procedural guarantees during the age determination test. According to UNHCR, age assessments should only be conducted when a child's age is in doubt and should be part of a comprehensive

evaluation considering both physical appearance and psychological maturity, as no method can definitively determine age. The use of age assessments should not be routine, especially when involving invasive medical techniques. $^{\kappa}$ 

## 3. DATA RELATED TO CHILDREN IN DETENTION

- **3.a** In recent years, the issue of children placed in detention has become a focal point of concern in Lithuania, particularly within the context of irregular migration.
- 3.b According to data from the Lithuanian Statistics Department, between 1 January and 28 December 2021, 4,326 irregular migrants entered the country, of which 25 percent (1,076) were minors (both accompanied and unaccompanied).\*
- 3.c According to data collected by the Office of the Ombudsperson for the Protection of the Rights of the Child and provided by the State Border Guard Service (SBGS) and the managers of the accommodation places, 615 minors (accompanied and unaccompanied) were in Lithuanian accommodation places in July 2021; 688 on 13 October 2021; 660 on 15 November; and 716 on 28 December. In all four facilities, children's accommodation amounted to detention. On 28 December 2021, children were recorded in the following centres:
  - Pabradė Foreigners Registration Centre: 44 children
  - Medininkai Foreigners Registration Centre: 58 children
  - Rukla Refugee Reception Centre: 412 children
  - Naujininkai Refugee Reception Centre: 202 children
- 3.d Authorities present varied data regarding unaccompanied minors in 2022 and 2023 (excluding those from Ukraine). According to the State Border Guard Service (SBGS), 8 unaccompanied minors were identified in Lithuania in 2022, all of whom applied for asylum and were examined by the Migration Department. According to the SBGS, no unaccompanied minor asylum seekers were recorded between 1 January and 1 June 2023.xi The Refugee Reception Centre, meanwhile, reported that 7 unaccompanied minors were newly accommodated in 2022, with a total of 70 unaccompanied minors residing at the centre in 2022. The centre also reports that only Ukrainian entered the centre in 2023, and a total of 6 unaccompanied minors resided in the centre this year (of whom 3 were Ukrainian children).
- 3.e The Migration Department has indicated that it has not received information on unaccompanied foreign minors who are not asylum seekers identified in the Republic of Lithuania in 2022 and 2023 and, accordingly, has not carried out the proper age determination procedures referred to in the "Description of the procedure for the determination of the age of the unaccompanied foreign minors."
- **3.f** The number of foreigners held at checkpoints and Border Crossing Points is not currently available.

#### 4. HUMAN RIGHTS CONCERNS

#### **DETENTION CONDITIONS**

- **4.a** Observers have documented and denounced immigration detention conditions in Lithuania, highlighting issues including cramped and overcrowded buildings, militarised environments, strict movement restrictions, detainees having to walk outside through freezing temperatures to access toilets and showers, and a lack of educational and recreational activities.\*
- 4.b The Office of the Ombudsperson for the Protection of the Rights of the Child has noted that conditions in detention facilities are inappropriate for housing children. It has noted that facilities are closed, secure centres surrounded by fences. In those that use modular houses, premises are small leaving families with unsatisfactorily sized living space and sanitary facilities are in separate units, forcing detainees to go outside to access toilets and shower rooms. Within Registration Centres, not all families were found to have been accommodated in accordance with Hygiene Space Requirements, and detainees complained about the lack of hygiene facilities and of hot water availability. Problems were also identified with regard to the provision of warm clothes and footwear for children, the provision of educational services, and a lack of social services due to the shortage of social workers.\*iii
- 4.c The conditions for children to play and be outdoors varied from one accommodation to another, with a segmented fence surrounding the accommodation area restricting children's movement in some accommodation areas, giving foreigners only a minimal passage from the tents to the sanitary facilities, while in other accommodation areas there were certain facilities (basketball court) and a gym. The implementation of the child's right to play and leisure activities in the temporary accommodation was not sufficient. Children's leisure activities are organised in the permanent accommodation, the Refugee Reception Centre, where unaccompanied minors are accommodated.xiv
- **4.d** In Pabradė Foreigners Registration Centre, families with children are placed in a separate building and NGO access is limited to asylum seekers. The situation appears to be de facto detention, although the existence of any formal detention decisions is unknown to NGOs as they lack access to such information.
- 4.e During a monitoring visit to Naujininkai Pre-Removal Centre (PRC) on 15 July 2022, an observer identified four families with children born in Lithuania lacking birth certificates. Three of these families, with children born as early as November or December 2021, only had a health facility statement as proof of birth. This lack of proper documentation was compounded by the *de facto* detention of these children without any legal basis. Families with expired detention could leave with their newborns, while those with restricted freedom of movement found their newborns effectively detained without official decisions communicated. This situation highlighted a lack of clarity and legal foundation regarding the status of children born in Lithuania within the PRC.
- **4.f** Conditions in temporary accommodations, such as Border Crossing Points, are particularly concerning. According to reports, these facilities are not designed for extended stays, but rather for initial procedures. Detainees are unable to contact the "outside world" from these facilities, and conditions are rudimentary.<sup>xv</sup>
- **4.g** Legislation mandates social and psychological services for unaccompanied minors, yet such roles are absent in temporary accommodations, including those managed

by border guards and municipalities. Involving social workers is crucial for the well-being of unaccompanied minors, addressing developmental needs and contributing to the prevention of violence. Unfortunately, instances lacking designated personnel hindered meeting the needs of these minors.

- 4.h International legal obligations also require states to promptly appoint a guardian for the best interests of unaccompanied or separated children, as outlined in Lithuania's Law on the Legal Status of Foreigners. The investigation revealed a delay in appointing guardians for unaccompanied minors, contrary to both international and national mandates. This delay was attributed to instances not promptly reported to SACCE and inappropriate application of legislative provisions in establishing guardianship. Consequently, some unaccompanied minors resided in border guards or other facilities for approximately two to three months without guardian representation, violating legal requirements.
- **4.i** During a visit to the Švenčionys Border Crossing Point (BCP) on 9 February 2022, the Lithuanian Red Cross reported that a family confined at the BCP lacked hygiene products, sharing one toothbrush and soap. The family of five also had insufficient bedding, with a young child sharing a bed without proper bedding. \*vi\* That same day, it was found that the BCP had supplied expired canned meat to a family, and that asylum seekers had expressed concerns about uneaten food and inedible items, as well as a lack of warm food, leading to a perceived food shortage. According to the State Service for Protection of Child Rights and Adoption (SSAT), a child there did not receive a designated food ration.
- 4.j On 1 December 2021, the Ombudsperson for the Protection of Children's Rights carried out an inquiry into the situation faced by unaccompanied minors in a facilities. Amongst numerous concerning findings, the investigation revealed that unaccompanied minors were frequently co-housed with unrelated adults. Such facilities also lacked permanent staff to oversee and supervise the children. In certain instances, unaccompanied foreign minors were found residing in tents and hangars, which did not meet the necessary standards for suitable living conditions.
- In 2022, there was a significant improvement in the living conditions of foreigners in 4.k detention centres-although this positive change is largely attributed to a substantial decrease in detainee populations, leading to increased available space and enhanced privacy. However, conditions also improved as a result of structural renovations, Kybartai Foreigners Registration Centre, for example, underwent renovations involving the removal of parts of the former detention facility's infrastructure, such as concertina wire and bars. Additionally, recreational rooms were added to all residential floors, and personal hygiene facilities were upgraded and made suitable for individuals from diverse religious backgrounds. Furthermore, in Rukla Refugee Reception Centre and Pabrade Foreigners Registration Centre, container villages were dismantled in the autumn, and all residents were relocated to buildings. It is noteworthy that Medininkai Foreigners Registration Centre was closed in August, where most residents had previously resided in container houses (the remainder in SBGS Border Guard School premises). By the year's end, all foreign residents were accommodated in buildings, reflecting a positive shift toward best practices.
- 4.I In 2022, compared to the second half of 2021, minors' access to education also greatly improved. At the beginning of the year, school-age children living in all centres had the opportunity to attend classes (some of them within the centres). During a Red Cross visit to Rukla Refugee Reception Centre in January 2022, it was

recorded that education was available to children not only inside the centre, but also outside it, which is considered a good practice.xvii

### **PUSHBACKS**

- 4.m Pushbacks, often violent, have regularly been documented at the Lithuania-Belarus border. In April 2023, the Council of Europe Commissioner for Human Rights said: "I have received consistent worrying reports of patterns of violence and other human rights violations committed against migrants, including in the context of pushbacks at Lithuania's border with Belarus. Parliament should contribute to putting a stop to these human rights violations and take the lead in guaranteeing a human rights compliant migration policy."
- 4.n There have been some documented instances in which groups with minor children were pushed back into Belarus. For example, on 9 February 2022, Syrian nationals accompanied by an Iraqi national, reported attempting to enter Lithuania for nearly two weeks. Despite being unable to specify the exact number of times they were pushed back across the border, they estimated it to be at least five occurrences. Amongst the group were two children.xix
- 4.0 However, while the State Border Guard Services claims that it records information pertaining to pushback events, it does not record information regarding the individuals who returned–and therefore cannot confirm the number of children affected. It is important to state that authorities have an obligation to gather data on individual persons who are turned away, particularly in order to safeguard the best interests of children.

## **5. RECOMMENDATIONS**

- **5.a** Based on the information above, the GDP and HRMI urge the Committee on the Rights of the Child to consider making the following recommendations with respect to Lithuania's fifth and sixth periodic review:
  - Urge Lithuania to stop all forms of immigration detention of children. This
    prohibition should extend to both de facto detention during ad hoc border
    procedures as well as during return procedures. As per the CRC's 2017 Joint
    General Comment with Committee on Migrant Workers concerning the human rights
    of children in the context of international migration, family members or guardians of
    accompanied children must also be accommodated outside detention along with
    their children.
  - Ensure that all child custodial centres meet international standards, ensuring that child migrants are guaranteed the right and ability to communicate with the outside world; information is provided in alternative languages to ensure understanding; material conditions guarantee access to security, health, food, and other rights; and detainees are able to access legal representatives.
  - Immediately take steps to prevent violence and abuse of child migrants in custody. Ensure that all staff members at facilities accommodating child migrants are trained to respect detainees' rights and sensitised to their needs. Where individuals have committed abuses against detainees, perpetrators must be

investigated and face criminal prosecution, and all necessary efforts must be made to allow victims access to mechanisms of justice and to prompt redress.

- Cease all pushbacks at borders and uphold obligations under Article 3 of the Convention against Torture and Article 33 of the 1951 Convention Relating to the Status of Refugees not to return anyone to a country where their life or freedom would be threatened and where they could face serious human rights violations and torture.
- Collect and make publicly available up to date data and statistics on all detention and other enforcement procedures that involve child migrants, including urging the State Border Guard Services to ensure that all instances of child pushbacks or territorial denial are properly recorded and reported.
- Ensure that journalists, NGOs and independent human rights monitors are given full and free access to observe what is happening to asylum seekers and migrants on the Belarus – Lithuania border.

### **ENDNOTES**

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- Certificate of the Ombudsperson for the Protection of the Rights of the Child on an inquiry at the initiative of the Ombudsperson for the Protection of the Rights of the Child into the situation of foreign migrant children in accommodation centres 31/12/2021 http://vtaki.lt/lt/media/force\_download/?Url=/uploads/documents/docs/780\_a927eae88990931376aab4d900 3f8a26.pdf
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