

# PICUM Input to the UN Special Rapporteur on the Human Rights of Migrants Report on pushback practices and their impact on the human rights of migrants

## February 2021

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of 167 organisations working with undocumented migrants in 33 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With nineteen years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

Pushbacks take place “when a person is apprehended after an irregular border crossing and summarily returned to a neighbouring country without assessing their individual circumstances on a case-by-case basis.”<sup>1</sup> This includes “cases of non-respect of human rights obligations related to refusal of entry into a country of persons seeking protection, the *refoulement* of those already within a territory, collective expulsion, obligations to carry out screenings, and other hostile action aimed to deny entry into European countries at land and sea borders.”<sup>2</sup> Pushbacks often occur alongside other fundamental rights violations, such as excessive use of force, ill-treatment or arbitrary detention, which are also prohibited by Article 3 and Article 5 of the [European Convention on Human Rights](#).

In the past years, national human rights institutions, international organisations and civil society organisations have reported instances of pushback on a regular basis.<sup>3</sup> This can be illustrated by three recent case examples from Greece, the Balkans and Italy.

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<sup>1</sup> European Union Agency for Fundamental Rights, 2020, [Migration: Fundamental Rights Issues at Land Borders](#), p. 4.

<sup>2</sup> Council of Europe, 2019, [Pushback policies and practice in Council of Europe member States](#), para. 13.

<sup>3</sup> In 2020, Refugee Rights Europe issued a [report](#) covering alleged pushbacks and rights violations throughout 2020 at the external land borders of Bulgaria, Croatia, Greece, Hungary, Romania, Poland, Slovakia and Spain. It also recorded pushbacks at sea in Spain, Italy, Malta, Greece and Cyprus, indicating that in some areas the practice has become systematic and normalised. From May 2019 to November 2020, according to the Danish Refugee Council 22,550 persons [reported](#) pushbacks to Bosnia and Herzegovina. Several pushback reports, including cases of chain-refoulement, were gathered by the [European Union Agency for Fundamental Rights](#). These included pushback operations across Greece-Turkey border, evidence of which was gathered by the [European Committee for the Prevention of Torture](#) during a visit to Greece in March 2020, and a range of violations across the land borders of Croatia with Bosnia and Herzegovina and Serbia.

***Case study 1: Allegations of pushbacks in Greece***

The Greek Coast Guard (HCG) has faced scrutiny over allegations of pushing back more than 1,000 migrants in at least 31 separate expulsions by transporting them to the edge of Greek territorial waters and abandoning them in inflatable life rafts. In one of these instances, on 26 July 2020, a group of 22 persons, including two babies, were allegedly taken at night from a detention centre in the island of Rhodes and left to drift in a motorless life raft before being rescued by the Turkish Coast Guard.<sup>4</sup> Instances have also been reported in which dinghies are either physically blocked from landing on Greek soil until they run out of fuel or are interceded by disabling the engine and creating waves, or towing the dinghy to Turkish waters when the wind is not favourable.

According to investigations by Forensic Architecture, on 4 March 2020, live rounds were likely fired by Greek security forces at migrants crossing the border fence near Kastanies/Pazarkule. As a result, Muhammad Gulzar, a Pakistani national, was killed, and six other people sustained injuries. In the same period, hundreds of other migrants who broke through the border fence were subjected to immediate extrajudicial expulsions from Greek territory, without being allowed to speak to a lawyer or apply for asylum. The New York Times and Forensic Architecture reported that the Poros Border guard station was being used as a extrajudicial facility where migrants were held before being summarily expelled.

***Case study 2: Pushbacks along the Balkan route***

The Danish Refugee Council documented a series of violent pushbacks along the Bosnia-Croatian border between 12 and 16 October 2020. More than 80 per cent of the cases collected by the Border Monitoring Network in Croatia in 2019 showed some form of violence or degrading treatment.

In a case taken to the Slovenian Administrative Court, a Cameroonian national was detained and held in a Slovenian police station for two days. Despite making multiple verbal requests for asylum, he was expelled to Croatia and chain refoiled onto Bosnia-Herzegovina. The Court ruled that the applicant's right to asylum had been violated, as was the principle of non-refoulment and the prohibition of collective expulsions.

***Case study 3: Chain pushbacks from Italy to Bosnia***

In the final months of 2020, Italy faced mounting pressure following reports that migrants and asylum seekers were being returned to Slovenia without being given the opportunity to apply for asylum and have their case reviewed, triggering a series of other chain pushbacks though the Balkans and to Croatia and Bosnia and Herzegovina. In October 2020, the governor of the Italian region bordering Slovenia said that 1,124 people had been expelled to Slovenia. The Italian government justified this practice as an application for a longstanding bilateral agreement between Italy and Slovenia.

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<sup>4</sup> For a detailed timeline of pushbacks and violations of human rights at the Greek-Turkish sea borders in 2020 see: [Refugee Support Aegean](#)

In a decision following an appeal by a Pakistani migrant, the Court of Rome stated that the practice of pushing back migrants and asylum seekers to Slovenia, where they would be subject to chain pushbacks to Bosnia, was illegal. The Court also found that the Italian Parliament had not ratified the bilateral agreement with Slovenia and could not modify obligations under Italian, EU or international law.

Further to the several instances of pushbacks involving EU Member states, the recent expansion of the **European Border and Coast Guards Agency (Frontex)**, has been accompanied by increasing allegations of involvement, or complicity, with pushback practices, from the [central Mediterranean](#) to the [Balkans](#) and [Greece](#). The expansion of Frontex's operational powers in the areas of border monitoring and returns has seen its peak with the 2019 European Border and Coast Guards Agency [Regulation](#), which [scaled up](#) the resources assigned to external border protection, including a standing corps of 10,000 operational staff, and €2,2 billion of the EU 2021-2027 budget to increase operational capacity and acquire vessels, planes, vehicles and other assets. In addition, the reform granted [expanded powers](#) to the standing corps staff in the fields of border control and returns, including the power to check identities, authorise or refuse entry, intercept persons who cross the border irregularly, identify irregularly staying migrants and assist EU and non-EU countries with return decisions and their execution. The increased role of Frontex raises particular challenges in terms of accountability, as highlighted by several independent [researchers](#).

#### *Case study 4: Frontex involvement in pushbacks in the Aegean Sea*

A [joint investigation](#) by Bellingcat, Lighthouse Reports, Der Spiegel, ARD and TV Asahi, found that Frontex vessels were directly involved in at least one pushback operation and in the vicinity of four more incidents in the Aegean Sea since March 2020. Frontex's assets deployed in Operation Poseidon and for Rapid Border Interventions were identified and tracked using public records and information from NGOs. The coordinates obtained suggested that Frontex assets were in the vicinity of four pushback incidents on [28-29 April](#), [4 June](#), [5 June](#) and [19 August](#) 2020, three of which took place in Northern Lesbos. The investigation found that within the range in which Frontex assets were located and considering that they are equipped to conduct border surveillance, Frontex personnel could have used radar and visual tools to observe what was happening around them. In addition, footage published by the Anadolu Agency showed a Romanian Frontex vessel blocking a dinghy in Greek territorial waters off the north-east coast of Lesbos on 8 June 2020 and creating waves to push the unseaworthy vessel back to Turkish waters. Eventually the Greek Coast Guard arrived in the scene and the Romanian Frontex vessel left, while another Portuguese Frontex vessel remained in the vicinity and within radar and visual range of the incident.

Human rights defenders and civil society organisations play an essential role as watchdogs of democracy, collecting and publishing evidence on pushbacks, calling for accountability, and providing support to people stranded at the external borders. Increasingly, these activities can lead to human rights defenders being [intimidated, harassed, and even criminalised](#). In May 2019, Open Democracy [recorded](#) 250 instances across 14 countries of people who were criminalised for providing basic support to migrants. In a [study](#) published in June 2019 by the European research platform ReSOMA, researchers and civil society groups identified at least 49 ongoing cases on investigation and criminal prosecution in 11 Member States involving a total of 158 people. The number of individuals criminalised for humanitarian activities has grown tenfold, from 10 people in 2015 to 104 in 2018.

### Case study 5: Judicial harassment of pro-transparency activists and migrants' rights defenders

In autumn 2020, the European Border and Coast Guard Agency launched new legal proceedings to recuperate almost €24,000 in legal fees after [winning an EU general court case](#) against pro-transparency activists [Luisa Izuzquiza and Arne Semsrott](#). The campaigners had sought access to the name, flag and type of each vessel deployed by Frontex in the central Mediterranean. Frontex had refused their request citing security issues, and was supported by a CJEU ruling in November 2019. In November 2020, other freedom of information requests filed by Izuzquiza and Semsrott [revealed](#) the role of Frontex and the Greek government in the illegal pushback of migrants in Greece.

### The impact of COVID-19 on the EU external borders

Covid-19 has posed a serious risk to people detained at EU borders; migrants living in camps showed disproportionately high infection rates. [Hundreds](#) of migrants tested positive for COVID-19 after a fire at the Moria camp left more than 12,000 homeless and destroyed most of their belongings.

Other problematic *de facto* detention measures implemented in the context of COVID-19 include the practice of quarantine boats. Around [10,000 people in Italy](#) have been detained since the outbreak of COVID-19 in so-called 'quarantine boats' following search and rescue operations. Italian civil society organisations pointed out to a number of deficiencies in these boats, including a lack of adequate health services, inadequate hygiene measures, a lack of space to maintain social distance, and high costs associated with the boats compared with similar facilities on land. In October 2020, a [15-year old boy](#) died after spending ten days on a quarantine boat on which there was only one doctor available for 600 people.

In parallel to this, many open reception centres in countries such as [Spain](#) and Greece turned into closed centres. In Greece, the emergency measures only allowed people to leave their homes if they had an identity card or a passport. This implied that undocumented migrants could not set foot on public spaces, turning reception centres into spaces of *de facto* detention based on public health grounds. Similarly, quarantine measures in Italy meant that many migrants were held in *de facto* detention in hotspots (especially in Sicily and Lampedusa). In Cyprus, asylum seekers were moved to an emergency camp in Nicosia district for 14 days, before being transferred to a reception camp in Larnaca, serving as a *de facto* detention centre.

Measures such as mass isolation or quarantine ships are representative of a generalised [trend](#) towards informalisation of detention, establishing arrangements outside of legal frameworks and barring migrants from accessing legal guarantees or challenging decisions.

### RECOMMENDATIONS

To address the increasing instances of pushbacks, it is essential to **put in place a strong and independent [mechanism](#) that monitors human rights violations at the borders**. This mechanism should cover all border management operations and should be able to act on information received from people who are now outside the European Union. Allegations of pushbacks should be adequately and promptly investigated and clear accountability mechanisms should be in place.



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International and non-governmental organisations play a key role as watchdogs of fundamental rights and should therefore be granted access to border areas. This is even more necessary at times in which human rights defenders and NGOs face increasing [criminalisation and intimidation](#) for their work denouncing pushbacks. To prevent further instances of criminalisation, it is key to set a **clear right for NGOs to access border areas, monitor and report on fundamental rights violations at the EU external borders and provide information to migrants.**

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