

Questionnaire of the Special Rapporteur on the human rights of migrants: pushback practices and their impact on the human rights of migrants

Submission by Save the Children on the EU-Balkans borders pushbacks

Save the Children is hereby submitting input regarding the situation of children at the EU-Balkans borders. The submission is not intended to be exhaustive.

1. Please provide information on any relevant legislation or policy in relation to the right to asylum to seek and enjoy in your country, which guarantees that migrants including asylum seekers' protection needs are examined individually, and they are not pushed back at the international border without access to this assessment and other relevant procedures.

Right to Asylum in Bosnia and Herzegovina (BiH) is governed by the Law on Asylum from 2016. Here below some of the provisions guaranteeing the right to asylum and protecting from pushbacks.

Law on Asylum BiH, Article 6, BiH (Principle of non-refoulement)

An alien shall not be forcibly removed or returned to a country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. An alien shall not be forcibly removed or returned to a country where he/she is not protected from being sent to such a territory.

Law on Asylum BiH, Article 8 (Exclusion of penalties for illegal entry into BiH)

No penalty shall be imposed against an alien, on account of his/her illegal entry or stay in BiH, coming directly from a territory where his/her life or freedom was threatened, provided that he/she reports himself/herself without any delay to the competent authorities and expresses justified reasons for his/her illegal entry or stay in BiH.

Law on Asylum, Article 28 (Basic principles)

The Ministry shall ensure individual, objective and impartial conduct of the procedure for granting, revoking and cancelling a refugee status and subsidiary protection as well as the procedure for extending subsidiary protection.

2. Please provide information on any existing good practices or measures taken (such as screening and referral mechanisms at borders) in your country to ensure that persons crossing international borders in mixed movements are protected according to international human rights law.

Refugees and migrants, including children, arrive to Bosnia and Herzegovina via non-official border crossings, many travelling with smugglers and being exposed to high protection risks. Most of them do not consider BiH as their country of destination and many try to continue their migration journey towards Western European countries by attempting to irregularly cross international borders and are exposed to high risks from smugglers, traffickers and even border authorities.

A good practice aimed at ensuring identification and referral mechanism of people of concern in transit is the establishment of outreach response at various locations, including entry and exit points in BiH. Having unlimited access to the population in transit, also at close vicinity of the borders helps aid workers to identify those in need, refer them to registration and other services they need, but also to document alleged human rights violations. For example, Save the Children coordinates with other agencies in maintaining three outreach teams operating at three locations within BiH: Tuzla (close to entry point), Sarajevo and Una-Sana Canton (exit point at the border with Croatia). At each location

outreach teams visit identified entry points, push-back locations, informal settlements, and transit locations and identify children, including unaccompanied and separated children. Outreach teams provide information, first psycho-social support and establish communication between the child and the state system – Service for Foreign Affairs under the Ministry of Security – to issue necessary documentation, relevant Centre for Social Welfare to appoint legal guardianship and other humanitarian actors to provide accommodation and child-centred services in temporary reception facilities. Outreach teams also record and document child's rights violations and report them to relevant authorities or agencies.

Moreover, within temporary reception centres, Save the Children established designated zones for unaccompanied and separated children with 24/7 child Protection Services who ensure referral to relevant stakeholders. In addition, there is a case management system approved by relevant Centres for Social Welfare to conduct systematic, organized and proactive case assessment, case monitoring and follow-up with relevant actors, offering a tailored support and referral mechanisms for health, protection and education, including specialized services to the most vulnerable children including the victims of violence (such as SGBV and trafficking).

3. Please provide information on existing restrictions or limitations in law and in practice in relation to the right to claim and seek asylum at international borders in your country (e.g., border controls, restricted access to territory) and elaborate the impact of these restrictions on the protection of the rights of migrants crossing international borders.

With few legal pathways available, refugees and migrants travel with smugglers on remote and hidden routes, hiding from the police and border patrols which exposes them to many risks. Asylum-seekers continue to face a lack of registration of their asylum claims and long waiting times. Close to 95% new arrivals formally express intention to seek asylum, but less than 5% formally lodge an asylum claim.

Since 2014, 15 people were granted subsidiary status and not a single person received refugee status. Children in BiH often say that they do not have any other option than to continue journey irregularly.

As explained in the above section, refugees and migrants, including children, arrive to Bosnia and Herzegovina via non-official border crossings. For the majority of them, it is almost impossible to reach official border crossing of the country they are aiming to reach, as they are undocumented, most often without their personal ID, passport or other identification documents, and not eligible to leave BiH at the official border crossing with Croatia and Serbia.

People of concern who cross borders irregularly and enter BiH are entitled to seek asylum (Article 31) and Service for Foreign Affairs under the Ministry of Security is responsible for issuing Attestations for the Intention to Seek Asylum (Article 32). That document lasts for 14 days when the Sector for Asylum invites the person of concern to submit their asylum claim. However, most documents expire before people can submit a request for asylum. Office for Asylum has extremely limited capacities to register asylum claims and does not have field offices in all areas, thus some persons are waiting for over a year without being able to access it. Transportation of those who wish to seek asylum to the Asylum Office in Sarajevo is rarely organized. An additional challenge is that some of the centres (e.g. temporary reception centre Blazuj hosting 3,300 single men and 60 unaccompanied and separated children) are not recognised as official reception site by a Government decree and persons accommodated at this address cannot seek asylum. When it comes to children, the primary concern regarding expressing the intention to seek asylum is identification, registration, age assessment and establishment of family links by relevant authorities.

Since this summer, refugees and migrants, including children, can only be registered if they are about to access accommodation. In case that there are obstacles in accessing accommodation (20-30% of population is sleeping in abandoned buildings and informal accommodation due to limited capacities for accommodation), unaccompanied children are not able to register and remain invisible. For



unaccompanied children, a lack of registration also means a guardian cannot be appointed to look after their wellbeing.

Service for Foreign Affairs registers refugees and migrants (intent to seek asylum) based on their statements if they do not possess documents. That results in children claiming to be adults and vice versa which exposes children to many protection risks, e.g. accommodation with single men, exposure to SGBV and smuggling/human trafficking networks, absence of specialized protection and education services etc. In addition, the claimed age often reflects the availability of accommodation and services in a particular moment. If there is available accommodation for single men but not for unaccompanied children, children are more inclined to declare to be adults in order to access accommodation and services. With the latest decision by the Ministry of Health, Labour and Social Policy in Una-Sana Canton, accommodation for unaccompanied children is forbidden unless they wish to be relocated to a designated facility in Dobož Istok. That has resulted in an increase of the number of children in squats and informal settlements and an increase in the number of children claiming to be adults in single men transit-reception centres (TRCs) such as TRC Blazuj. Last but not least, if a child is not identified by Service for Foreign Affairs, then the Centre for Social Welfare cannot appoint legal guardianship as per law (Article 12 of the Law on Asylum in BiH). In that case, the child is invisible, not recognized, and cannot enjoy their rights as per Convention of the Rights of the Child or Family Law in BiH.

4. Please provide information on any concrete instances of pushbacks, including an analysis on the circumstances of the event.

Pushbacks along the Croatian (EU) – BiH border are often associated with severe violence and humiliation of migrants by the Croatian police. Croatian authorities publicly remain adamant that no violence has taken place despite all available evidence suggesting otherwise. Currently there is an inquiry regarding improper EU response to such allegations.

Within the local civil society there is a lack of capacity to document the cases properly and take them before the European Court of Human Rights, even though the number and nature of pushbacks would warrant such action.

Save the Children field response team has recorded many cases that illustrate violent pushbacks, primarily by Croatian authorities on the border between Croatia and BiH.

During an interview a 15-year-old boy from Afghanistan reported that the Croatian police beat him on the head with batons and that he was bleeding heavily which resulted in a hematoma injury. He stated that the Croatian police took his phone. He was trying to cross the border together with a family from TRC Sedra. When asked if the police beat women as well, he stated that they did and that they pushed and cursed them in the local language, that only small children were physically unharmed.

On another instance a 17-year-old boy from Pakistan stated that he was pushed back from Slovenia-Croatia border by Croatian police all the way back into Bosnia and Herzegovina. He stated that he was sleeping near the border together with 15 other people, the police arrived and they tried to run away but that the police reached them and started beating them with batons and causing them injuries. After this he alleged that they took them through the territory of Croatia to BiH where he was accommodated in one of the reception centers. Examination of his injuries found stomach and hand bruises from the incident.

5. Please indicate any specific challenges that your Government has encountered, in the context of the COVID-19 pandemic, on ensuring the human rights of migrants crossing international borders, either by land or by sea.

With the emergence of COVID-19, the main challenges included access to and constraints in accommodation and freedom of movement restrictions. Capacities of Service for Foreign Affairs were

drastically reduced and population arriving was referred to the closes reception facility without prior registration. E.g. Service for Foreigners' Affairs Tuzla (entry point) did not conduct registrations from March 2020 till almost the end of the year explaining that all persons should go to Canton Sarajevo where there are reception facilities. It means that all new arrivals were not registered at the first entry point and travelled part of the country being invisible and having no legal status regulated. The closure and the restricted working time of some institutions and the lack of technical equipment to participate in online meetings also disrupted participation in interagency and coordination meetings.

In order to respect the provisions and recommendations by the Ministry of Health in establishing isolation areas in all reception facilities, the accommodation capacities were consequently reduced, as isolation areas were mainly established within accommodation capacities, resulting in mixing symptomatic persons with persons who had different type of diagnosis thus exposing them to health risks. In addition, accommodation capacities temporarily became closed-type facilities, which resulted in an increased number of people sleeping rough but also increased tensions and worsened the mental health of beneficiaries inside of temporary centres.

Persons of concern, including children in facilities, faced deterioration of mental health which often resulted in alcohol and drugs consumption, suicide attempts, self-harm, increase in the number of GBV victims etc. Group activities, sessions and workshops aimed at psychosocial support were also restricted in line with the recommendations which affected prevention of risks by humanitarian staff.

6. Please indicate any challenges and/or obstacles faced by Governmental institutions or civil society organizations and individuals in protecting the human rights of migrants at international borders, including those in distress at sea and in situations where pushbacks or pullbacks are likely to take place.

For civil society organizations who identify persons who claim to be pushed back or to have survived other forms of human rights at the borders it is difficult to:

- communicate, as there is always a struggle to ensure a sufficient number of interpreters for the native languages of the population of concern;
- avoid secondary victimisation through multiple interviews on traumatic events reported by the population of concern, including children.
- estimate how long people on the move will stay in the country as very frequently they are gone before the official process of investigation started or ended.
- reaching out to girls and women and talking about their experiences due to cultural norms and lack of gender-sensitive approach.

Moreover, many refugees and migrants are reluctant to officially report violations of human rights as they are reluctant to speak about irregular border crossing and tell locations where they usually go when trying to cross the border. Those reported to be pushed back are often traveling in groups accompanied with smugglers, thus will be reluctant to tell the truth in smuggler's presence. Outreach teams who reach out to them do not have sufficient time and adequate friendly and even more difficult child-friendly environment to conduct interviews. Also, motivating those allegedly pushed back to officially report human rights violation is difficult as it is hard to tell what is the exact procedure, what will the process look like and what the outcome may be.

The rising xenophobia of the local population, the emergence of the pandemic and the lack of shared responsibility of the migration flows between the cantons but also within the country contributed to the rise of restrictive migratory policies by respective Cantonal Authorities and Operational Groups for Migration Management. Thus, humanitarian aid to people sleeping rough in Bihac area was forbidden and persons of concern without accommodation resorted to sleeping in informal settlements with no sanitation, water, distribution of humanitarian aid or provision of services. In addition, public transportation of persons of concern in Una-Sana Canton was forbidden resulting in many families with small children residing in abandoned houses near the Croatian border in Bosanska Bojna and declining

accommodation in reception facilities. In addition, the latest decision by the Ministry of Health, Labour and Social Policy to disallow accommodation of unaccompanied and separated children in Una-Sana Canton resulted in children sleeping in inhumane conditions and without appropriate care, despite the actual availability of accommodation.

Last but not least, improved migration management practices, including better coordination between the different responsible government and non-government actors, respecting all international and national human rights standards needs to be ensured. The government of Bosnia and Herzegovina should take ownership over-responding to the refugee and migrant crisis in the country and fulfilling its obligations towards refugees in line with the international law.