

Input on the first draft of the Committee on Enforced Disappearances
General Comment on Enforced Disappearances in the Context of Migration

Submitted by:

Border Violence Monitoring Network

(15th June 2023)

I. Reporting Organisation:

1. Border Violence Monitoring Network¹ (BVMN) is a coalition of organisations working to document illegal pushbacks, collective expulsions, and police violence along the EU's external borders in the Western Balkans and Greece since the formal closure of the route in 2017. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

II. Summary of Feedback and Key Recommendations:

2. Reflecting the widespread and systematic use of pushbacks and violence at borders, BVMN welcomes the General Comment's explicit reference to pushbacks, chain-pushbacks and refoulement and strongly aligns itself with the Committee's view that under specific circumstances these practices can constitute violations of the Convention.

3. In the General Comment *Introduction*, BVMN urges the Committee, in line with the Guiding Principles for the Search for Disappeared Persons and the Global Compact for Safe, Orderly and Regular Migration, to include reference to the specific vulnerabilities of migrants at border regions or while crossing international borders

4. Under the *Prohibition of Secret Detention of Migrants*, BVMN recommends amendments to Paragraphs 16 and Paragraphs 20 to further align the General Comment with previous recommendations issued by the Committee and other UN Human Rights Bodies. This includes adding explicit reference to improvised detention facilities, the obligation to investigate even when no formal complaint has been filed, and the obligation for States to develop Independent Border Monitoring Mechanisms.

5. Under *Data Collection*, BVMN recommends qualifications to the General Comment to ensure that State parties are collecting, storing or sharing data with full transparency and in alignment with the principles of the best interest of the child.

6. Under *Policies and Non-Criminalisation*, BVMN supports the obligation for States to review their legislative terminology but further recommends States review current and historic cases of criminalization of Human Rights Defenders who have been prosecuted for their lawful involvement in search and rescue operations, monitoring and documenting violations, or providing any other form of assistance to migrants.

7. Under *Non-Refoulement and the Prohibition of Pushbacks*, BVMN recommends the Committee align the General Comment with recent statements issued by other UN Human Rights Bodies and recommend the establishment of domestic independent border monitoring mechanisms which

¹Border Violence Monitoring Network. n.d. *About Us*. Available from: <https://www.borderviolence.eu/about/>

include provisions for victims of pushbacks and associated violations to submit evidence and complaints without fear of reprisals from state authorities.

8. Under *the Obligation to Search and Investigate*, BVMN recommends the Committee address recent State practices and clarify the obligation to carry out search and investigation if the State party becomes aware of a disappearance by virtue of information supplied by non-state actors, even when no formal complaint has been issued.

III. Specific Recommendations or Suggested Amendments to the General Comment:

Introduction

9. Reflecting the Guiding Principles for the Search for Disappeared Persons² and the Global Compact for Safe, Orderly and Regular Migration³, the Border Violence Monitoring Network recommends further development of the General Comment to include in *Paragraph 2* explicit reference to the specific vulnerabilities of migrants at border regions or whilst crossing international borders.

10. Considering the aforementioned, BVMN, therefore, recommends *Paragraph 2* be amended to read:

Paragraph 2: A number of migrants are in a situation of particular vulnerability, “which may arise from the circumstances in which they travel, [as well as, often, due to their undocumented status and language barriers], **their treatment at border regions or whilst crossing them**, or the conditions they face in countries of origin, transit and destination”. It is thus especially important that the universal human rights and fundamental freedoms of migrants remain respected, protected and fulfilled at all times.

Prohibition of Secret Detention of Migrants

11. Through our field-based member organisations, BVMN has collected evidence of the continued and deliberate use of secret or improvised detention sites such as stables, abandoned buildings, and derelict railway stations⁴ in which migrants are held outside all fundamental legal safeguards provided for under article 17 (2) of the Convention, and in which these sites become

² See: Principle 9 (1) of the UN CED Guiding Principles for the Search for Disappeared Persons reads: *Given the particular vulnerability of persons who cross international borders on a regular or occasional basis, especially unaccompanied children, the States concerned should take specific coordinated measures to prevent disappearances in that context.* See: UN CED. (2019). Guiding Principles for the Search for Disappeared Persons. Available at: <https://digitallibrary.un.org/record/3899423?ln=en>

³ Global Compact for Safe, Orderly and Regular Migration. (A/RES/73/195)

⁴ See: Border Violence Monitoring Network. (2021). Annual Torture Report 2020. [Online]. Available from: <https://www.borderviolence.eu/annual-torture-report-2020/>; Border Violence Monitoring Network. (2020). ‘Pushed back with a broken leg from a hospital in Xanthi. Reported by Mobile Info Team’. Available at: <https://borderviolence.eu/testimonies/may-14-2020-0000-xanthi-hospital-to-evros-river/>; Border Violence Monitoring Network. (2021). ‘They kept saying to us “Arab dog”. You can’t imagine how much hatred was there. It felt like it was a retaliation. Reported by Josoor’. Available at: <https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-riv>

the locations of grave rights violations and are systematically used to facilitate pushbacks across international borders.

12. BVMN welcomes the explicit reference to incommunicado detention in paragraph 16 of the General Comment but due to systematic and habitual patterns of improvised detention spaces, sometimes referred to as '*black sites*' within the media⁵, being used to detain, torture and pushback migrants, we believe that any reference to secret and incommunicado detention must also include, inter alia, explicit reference to the prohibition of improvised detention spaces. Therefore, we recommend the Committee reaffirm that in line with Article 17 (2) of the Convention, migrants must not be deprived of their liberty in facilities not officially recognised or supervised.

Paragraph 16. The absolute prohibition of secret detention of any person, including migrants, under article 17(1) encompasses any form of deprivation of liberty, regardless of the pretext used to justify incommunicado detention or transfer to a secret location **or improvised detention site not officially recognised**, or the duration of the deprivation of liberty.

13. Furthermore in line with Paragraph 35, BVMN recognise that in migration contexts disappearances (and as such the use of secret detention) are often not reported via formal complaints, frequently due to victims' precarious legal statuses and fear of continued abuses from State authorities. Therefore, BVMN recommends the Committee consider aligning the General Comment with previous recommendations issued under the Concluding Observations for Greece⁶ by clarifying the obligation of State parties to ensure prompt, thorough and impartial investigations, even if there has been no formal complaint. As such BVMN recommends the following amendments to the General Comment be added:

Paragraph 16: States parties should also ensure that allegations of secret detention are duly investigated, **even if no formal complaint has been filed**, and that those responsible are prosecuted and punished in accordance with the gravity of their acts if found guilty.

14. Furthermore, evidence collected by BVMN's field-based member organisations shows how migrants are routinely being forced to sign documents in a language that they do not understand⁷, often under direct coercion or after being subjected to violence and torture or periods of secret

⁵ Lighthouse Reports. (2022). 'Europe's Black Sites: Refugees arbitrarily detained, tortured at secret facilities in EU'. Available at: <https://www.lighthousereports.com/investigation/europes-black-sites/>

⁶ Committee on Enforced Disappearances. (2022). Concluding observations on the report submitted by Greece under article 29 (1) of the Convention (CED/C/GRC/CO/1); Paragraph 21 reads: The Committee urges the State party to ensure that: (a) All allegations of enforced disappearance are investigated promptly, thoroughly and impartially, even if there has been no formal complaint, and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their acts;

⁷ See: Border Violence Monitoring Network. (2022). "'After five days of walking, seven hours in overheated, windowless vans and two hours in captivity: 18 people from Pakistan are surprised by the "respectful" they encountered'. Reported by Blindspots". Available at: <https://borderviolence.eu/testimonies/may-8-2022-0000-breznica-in-varazdin-county-croatia/>; Border Violence Monitoring Network. (2020). "'When they finish with my friend, they come for me". Reported by No Name Kitchen". Available at: <https://borderviolence.eu/testimonies/september-8-2020-2200-near-glinica-bosnia-and-herzegovina/>

and incommunicado detention. Therefore BVMN finds it important that the Committee further expand on *paragraph 16 (d)* to ensure this existing State practice is reflected and prohibited under the General Comment.

15. Lastly, BVMN welcomes the Committee's recommendation in *Paragraph 20* that State parties must establish "independent and impartial monitoring and accountability mechanisms", but recommends the development of this paragraph to further align with recommendations issued by complementary UN mechanisms⁸ by adding further explicit reference to the establishment of Independent Border Monitoring Mechanisms. Therefore, we recommend the following amendments to the General Comment be added:

Paragraph 20: [...] Access to sites of deprivation of liberty must be guaranteed in law, in accordance with article 17(2)(e) of the Convention, and in practice. Therefore, States parties should establish independent and impartial monitoring and accountability mechanisms, **such as a national preventive mechanism or independent border monitoring mechanism**, in places of deprivation of liberty **with the ability to conduct unlimited, unannounced visits**. Moreover, States parties should ensure that any person deprived of liberty has access to appropriate mechanisms to report violations of their rights to the relevant authorities

Data Collection

16. BVMN re-affirms that a lack of reliable data and statistics is one of the obstacles to preventing and responding to disappearance of migrants but welcomes further clarification in the General Comment that ensures migrants have the right to access their personal data or request that their data be deleted. We affirm that migrants must also be informed of their ability to access legal remedies or lodge administrative disputes related to the collection, access and storage of personal data.

17. Recalling *Paragraph 22* of the General Comment, BVMN recognises that without proper regulation, national and international databases on disappeared and missing migrants could potentially be misused for discriminatory purposes such as profiling, surveillance, or persecution. Therefore, BVMN recommends further clarification be added to *Paragraph 22* to ensure that interoperable databases are pursued with full transparency to the data subject.

18. Furthermore, BVMN recommends further amendment be made *Paragraph 22* of the General Comment to clarify the obligation that any data sharing be carried out in accordance with the principles of the best interest of the child.

⁸ See: OHCHR report on '*Recommended Principles and Guidelines on Human Rights at International Borders*'; the Special Rapporteur on the Human rights of Migrants report on '*Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*' (A/HRC/47/30) and report on '*Human Rights Violations at International Borders: Trends, Prevention and Accountability*' (A/HRC/50/31); the Committee on the Rights of the Child Concluding Observation on Greece (CRC/C/GRC/CO/4-6)

19. Lastly, BVMN welcomes further clarification be added to *Paragraph 24* to ensure that if qualitative data is collected, processed, or shared, it is done so whilst ensuring the full protection and anonymity of the affected persons. As such, we recommend the following amendments be added:

Paragraph 24: In addition to collecting data, States parties should conduct contextual analysis to identify possible patterns in disappearances of migrants and underlying structural failures that enable these crimes, as well as possible ties between authorities and criminal networks involved in human trafficking and smuggling of migrants. For this purpose, the Committee also recommends the collection of qualitative data **while ensuring full protection and anonymity of the affected persons.**

Policies and Non-Criminalisation

20. BVMN welcomes the Committee's request that "States parties should review the terminology used in certain types of legislation, such as anti-trafficking, anti-smuggling, and anti-terrorism legislation" and further recommends States review current and historic cases of the criminalisation of human rights defenders, civil society actors, journalists who have been prosecuted for their lawful involvement in search and rescue operations, monitoring and documenting violations or providing any other form of assistance to migrants.

Non-Refoulement and the Prohibition of Pushbacks

21. Reflecting the widespread and systematic use of pushbacks and violence at borders, BVMN welcomes the Committee's explicit reference to pushbacks, chain-pushbacks and refoulement in the General Comment. Furthermore, BVMN strongly aligns itself with the Committee's view that "when pushbacks involve the deprivation of liberty of migrants and the concealment of their fate or whereabouts, they amount to enforced disappearances within the meaning of *Article 2* of the Convention and constitute a violation *Articles 17 and 18* of the Convention.

22. Considering the recent recommendations made by United Nations Human Rights Mechanisms to States regarding the creation of Independent Border Monitoring Mechanisms⁹, BVMN proposes that the Committee make additional changes to Paragraph 31 of the General Comment to align it with the call for States to establish their own domestic Independent Border Monitoring Mechanism.

23. Furthermore, to ensure respect for the principle of non-refoulement in practice, States must enable a mechanism that allows non-state actors to submit complaints or transmit evidence related to the use of pushbacks and enforced disappearance in the context of migration.

⁹ See: OHCHR report on '*Recommended Principles and Guidelines on Human Rights at International Borders*'; the Special Rapporteur on the Human rights of Migrants report on '*Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*' (A/HRC/47/30) and report on '*Human Rights Violations at International Borders: Trends, Prevention and Accountability*' (A/HRC/50/31); the Committee on the Rights of the Child Concluding Observation on Greece (CRC/C/GRC/CO/4-6)

24. Therefore, considering the aforementioned, BVMN recommends the following amendments be added to the General Comment:

*Paragraph 31: To ensure respect for the principle of non-refoulement in practice, States parties should build the necessary institutional capacity to carry out individual assessments, such as duly trained human resources and adequate funding, **establish a domestic independent border monitoring mechanism and the opportunities to receive direct evidence or complaints of rights violations**. Furthermore, States parties should provide training to border officials and staff involved in asylum, return, surrender or extradition procedures and to law enforcement officials, in general, on the concept of “enforced disappearance” and on the assessment of the related risks.*

The Obligation to Search and Investigate

25. BVMN re-affirms the Committee’s statement that in migration contexts, disappearances are often not reported by relatives or witnesses and thus concludes the important role that civil society organisations take when transmitting evidence of enforced disappearance, especially evidence of the use of pushbacks and secret detention of migrants.

26. Reflecting the recent patterns of States parties refusing to initiate search and investigations by virtue of information supplied by civil society groups, BVMN recommends the Committee add an explicit reference to the obligation on a State party to initiate search and investigations, even if the information is supplied by civil society organisations. As such BVMN recommends the following amendments be added:

*Paragraph 35: Authorities should initiate the search and investigation ex officio as soon as they become aware of or have indications that a person has been subjected to a disappearance, **including by virtue of information supplied by non-state actors, even when no formal complaint has been issued**.*