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

Submitted by:
Border Violence Monitoring Network

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1. **Reporting organisation:**

1. Border Violence Monitoring Network[[1]](#footnote-1) (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 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.

1. **Summary of feedback and recommendations:**

2. Due to the continued and growing criminalisation of organisations and individuals working in the context of enforced disappearances during migration, the Border Violence Monitoring Network recommends the Committee issue further clarification on the legal obligation of States to ensure they refrain from acts of criminalisation or reprisals.

3. Due to the systematic use of improvised detention spaces in the course of enforced disappearance during migration, the Border Violence Monitoring Network recommends that all references to the prohibition of secret detention must also include, inter alia, explicit reference to the prohibition of incommunicado detention and the use of improvised detention spaces.

4. Furthermore, we recognise the growing trend of States legislating conditions in which the principle of non-refoulement can be breached. In clarifying the legal obligations of State Parties under the ICPPED, the Committee should further clarify the non-derogable aspect of the principle of non-refoulement.

5. Reflecting upon the definition of pushbacks provided within the concept note, the Border Violence Monitoring Network invites the Committee to consider further expanding the definition to ensure the lived experience of pushback survivors is reflected in the definition proposed. This includes:

5.1. Adding further clarification to ensure that the definition includes pushback survivors who are forced across an international border, including to a country they have not been too prior.

5.2. Adding further explicit reference to pushbacks carried out by Non-State actors, pushbacks carried out by agencies of intergovernmental organisations, pushbacks amounting to chain-pushbacks.

5.3. Adding further clarification on potential violations of Article 2 in situations where individuals have gone missing after being pushed back.

6. In line with the aforementioned recommendation on the definition of pushbacks, we recommend the development of a working party to further develop an internationally agreed upon definition of pushbacks with the input of civil society, academia, and UN representatives. We recommend the working party should prioritise the involvement of organisations working directly with survivors of pushbacks and have an open selection process.

7. Furthermore, noting the increasing prevalence of migrants, refugees and asylum-seekers being pushed back across multiple successive countries, and the risk of enforced disappearance that this trend poses, we invite the Committee to extend the scope of the General Comment to also include provisions related to chain-pushbacks or chain-refoulement.

8. In the scope of the General Comment, the Border Violence Monitoring Network recommends further clarification and guidance is issued to ensure that the so-called “safe country lists” should not be used as an alternative to individual assessments and that all States are obliged to consider the additional risk of being subjected to enforced disappearance and chain-refoulement.

9. Lastly, we recommend the Committee take note of recent trends and developments by reaffirming the importance of the obligation to investigate when disappearances are committed by Non-State actors and further expand the General Comment to explicitly reference that the obligation to investigate also extends to agencies of intergovernmental organisations.

1. **Introduction:**

10. The Border Violence Monitoring Network reaffirms the importance of recognising migrants under the broadest sense and welcomes, for the purpose of the General Comment, that migrants are considered to encompass asylum seekers and refugees, as well as persons who migrate for economic, labour, climatic or other reasons.

11. Recalling UN General Assembly Resolution A/RES/74/148 on the Protection of Migrants, the Border Violence Monitoring Network shares the concern of the large and growing number of migrants in vulnerable situations, especially relating to border violence. The Border Violence Monitoring Network has observed the increasing and habitual use of pushbacks against migrants, refugees and asylum seekers, and to date, has documented pushbacks affecting 24,990 people.

12. The Border Violence Monitoring Network reiterates the concept note and affirms that the rigid migration policies of States such as refusal of entry, pushbacks often accompanied by violence, expulsion or detention, and the increasingly perilous journeys of migrants cause a particular risk to become victims of enforced disappearances. Reflecting upon the scope of the issue, we further conclude that enforced disappearances in the context of migration are by no means a problem of certain States, and additionally wish to highlight the responsibility of States that initiate chain-pushbacks or chain-refoulement.

13. Reaffirming the importance of the objective of the General Comment, the Border Violence Monitoring Network has continued to document persistent breaches of the ICPPED in the context of migration and thus welcomes further clarification on the measures State parties should implement to ensure full compliance.

1. **Obligation to investigate**

14. Reaffirming the views of the Committee as expressed within contemporary jurisprudence[[2]](#footnote-2), the Border Violence Monitoring Network reaffirms the importance of the obligation to investigate when disappearances are committed by Non-State actors.

15. The Border Violence Monitoring Network is deeply concerned with the growing evidence of the involvement of the European Border and Coast Guard Agency (Frontex) in pushbacks at sea and thus seeks to further ensure that the obligation to investigate is also extended to agencies of intergovernmental organisations.

16. Recalling the right to report alleged enforced disappearances and previous comments made by the Committee, the Border Violence Monitoring Network, affirms that the persecution and discrediting of human rights defenders and organisations working to assist victims of enforced disappearance, or document, report on and monitor systematic practices that contribute to enforced disappearances is in variance with the Convention.

17. We assert that all acts of criminalization or reprisals against human rights organisations or defenders reporting alleged enforced disappearances should be viewed as a breach of the obligation set under the Convention. Thus, due to the continued and growing criminalisation of organisations working in the context of enforced disappearance during migration we call upon the Committee to further clarify the legal obligations and measures State parties should implement to ensure full compliance with the ICPPED.

1. **Prohibition of secret detention of migrants**

18. Reaffirming the importance of clarifying the legal obligation of the prohibition of secret detention of migrants, the Border Violence Monitoring Network asserts that multiple States are consistently acting in variance with Articles 17 and 21 of the ICPPED, and continue to fail to provide effective safeguards against arbitrary arrest or detention, including secret detention.

19. The Border Violence Monitoring Network and its partner organisations have well-documented evidence to show how migrants and refugees are routinely being held in secret detention, often within improvised detention sites such as stables, abandoned buildings and derelict railway stations.[[3]](#footnote-3)

20. We assert that all reference to the prohibition of secret detention must also include, inter alia, explicit reference to the prohibition of incommunicado detention and the use of improvised detention spaces.

1. **Non-refoulement**

21. State Parties are obliged to determine in each individual case if the individual at hand faces a real and personal risk of enforced disappearance in case of return, lists of “safe countries” should not be used as an alternative to individual assessment.

22. The Border Violence Monitoring Network reaffirms that so-called “safe country lists” should not be used as an alternative to individual assessment and that all States must be obliged to consider the additional risk of being subjected to enforced disappearance (“chain-refoulement”). In the scope of the General Comment, the Border Violence Monitoring Network recommends further clarification and guidance for State Parties on this issue.

23. We recognise the growing trend of State Parties legislating conditions in which the principle of non-refoulement can be breached. In clarifying the legal obligations of State Parties under the ICPPED, the Committee should further clarify the non-derogable aspect of the principle of non-refoulement.

1. **Pushbacks**

24. Recalling the scope of pushbacks, the Border Violence Monitoring Network and partner organisations have collected testimonies of 1,520 pushback cases affecting 24,990 people.

25. Reaffirming the Committee's statement that pushbacks are often accompanied by violence, in 2020, the Border Violence Monitoring Network concluded that in 89% of pushbacks, there was evidence of one or more forms of violence that we assert would amount to torture or inhuman treatment.

26. Reflecting upon the concept note, the Border Violence Monitoring Network invites the Committee to extend the scope of the General Comment to also include provisions related to chain-pushbacks or chain-refoulement.

27. Reflecting upon the definition of pushbacks provided within the Concept Note, the Border Violence Monitoring Network invites the Committee to consider further expanding the definition to ensure the lived experience of pushback survivors is reflected in the definition proposed. This includes:

27.1. Adding further clarification to ensure that the definition includes pushback survivors who are forced across an international border, including to a country they have not been too prior.

27.2. Adding further explicit reference to pushbacks carried out by Non-State actors, pushbacks carried out by agencies of intergovernmental organisations, pushbacks amounting to chain-pushbacks.

27.3. Adding further clarification on potential violations of Article 2 in situations where individuals have gone missing after being pushed back.

28. Further to this, in the development of the General Comment, the Border Violence Monitoring Network recommends the development of a working party to further clarify and develop an internationally agreed-upon definition of pushbacks with the input of civil society, academia, and Committee representatives. Within the working party, priority should be provided to organisations working directly with victims of pushback.

1. Border Violence Monitoring Network. n.d. *About Us.* Available from: <https://www.borderviolence.eu/about/> [↑](#footnote-ref-1)
2. Case 001/2013, Yrusta v. Argentina, 10.9; CED, COB on Italy, CED/C/ITA/CO/1, 17 April 2019, para 23; CED Annual Reports: 2017 (A/72/56) para 79; CED Annual Reports: 2018 (A/73/56) para 41; UN Working Group on Enforced or Involuntary Disappearances, 2017, Enforced Disappearances in the Context of Migration, A/HRC/36/39/Ad.2, para 50-51,71; HRC General Comment No 31 The Nature of the General Legal Obligation Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, par. 18, [↑](#footnote-ref-2)
3. Border Violence Monitoring Network. (2021). Annual Torture Report 2020. [Online]. Available from: <https://www.borderviolence.eu/annual-torture-report-2020/> [↑](#footnote-ref-3)