

Input to the joint statement on the notion of short-term enforced disappearance

Submitted by:
Border Violence Monitoring Network

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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. Enforced Disappearance in the Context of Migration:

2. 'Pushback' is a common term to denote the action of State representatives forcibly, and in most cases collectively, expelling individuals seeking protection to another country in an irregular/informal manner and subsequently preventing or restricting their access to protection mechanisms².

3. Pushbacks have been recognised in the *Draft General Comment No. 1 on Enforced Disappearances in the Context of Migration*³ as a "restrictive and dehumanising border governance *directly* contribute to the disappearance of migrants" that when involves "the deprivation of liberty of migrants and the concealment of their fate or whereabouts, amount to enforced disappearances within the meaning of article 2 of the Convention, regardless of the duration of the deprivation of liberty".

4. The Border Violence Monitoring Network recognises that across Europe, pushbacks are both widespread and systematic, and due to their frequency, are now indistinguishable from official State policy. To date, through our field-based partner organisations, BVMN has collected evidence of over 25,000 pushbacks from 14 countries across Europe. We affirm that not only are they carried out with astonishing frequency and brutality, but we affirm that the pushback *modi operandi* also show the cumulative constitutive elements of an enforced disappearance.

4.1. In Greece, BVMN's field-based member organisations have collected evidence of the pushback of an estimated 12, 972 people through the documentation of 201 testimonies.

4.2. In Croatia, BVMN's field-based member organisations have collected evidence of the pushback of an estimated 11,192 people through the documentation of 989 testimonies.

4.3. In Hungary, BVMN's field-based member organisations have collected evidence of the pushback of an estimated 3,312 people through the collection of 201 testimonies.

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

² In the the draft General Comment on Enforced Disappearances in the Context of Migration, the Committee stated that in the absence of an internationally agreed legal definition of the term "pushbacks", it considers pushbacks as "measures taken by States, sometimes involving third countries or non-State actors, which result in migrants [...] being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border"

³ OHCHR, n.d. *General Comments: Committee on Enforced Disappearances*. Available from: <https://www.ohchr.org/en/treaty-bodies/ced/general-comments>

III. Short-Term Enforced Disappearance in the Context of Migration:

5. During pushbacks, BVMN's field-based partner organisations have consistently documented evidence of the deprivation of liberty at formal and informal detention sites that we affirm would amount to enforced disappearance. An analysis of this data shows that consistently during pushbacks, migrants, refugees and asylum seekers are detained for short-periods, often whilst State officials take active measures to conceal the fate and whereabouts of the detained. In each instance, the detention is part of and directly precludes a pushback.

6. In Croatia, between 2021 and 2022, BVMN's field-based partner organisations collected 108 testimonies of detention during pushbacks.

6.1. Our analysis has shown that in 71% of testimonies depicting detention during pushbacks, migrants, refugees and asylum seekers are detained for less **than 12 hours**. A further 19% of testimonies recall detention for between 12-24 hours, whilst 10% of testimonies recall respondents being detained for longer than 24 hours, with one respondent recalling being held in detention for 96 hours.

6.2. Further highlighting the short-term nature of enforced disappearances of migrants, refugees and asylum seekers in Croatia, our analysis of pushback testimonies has shown that for persons held at a formal or informal detention site for under 12 hours, **on average they are detained for 4 ½ hours**. In situations where a person is detained for more than a day, on average they are detained for 51½ hours.

6.3. Across all these cases of detention, persons have been held without charge or access to safeguards such as a lawyer, contact with families or NGOs, or access to a medical professional. Of increasing concern is the indiscriminate nature of pushbacks and enforced disappearances in Croatia. Our analysis has shown that over 34% of detention cases documented during pushbacks contain minors.

7. In Greece, between 2021 and 2022, BVMN's field-based partner organisations collected 114 testimonies of detention during pushbacks:

7.1. Our analysis of Greece has shown that in 65% of testimonies depicting detention during pushbacks, migrants, refugees and asylum seekers are detained for less than 12 hours. A further 28.5% of testimonies recall detention for between 12-24 hours, whilst 6.5% of testimonies recall respondents being detained for longer than 24 hours.

7.2. A further analysis of the pushback testimonies shows that for persons detained for under 12 hours, **on average they are detained for 5 ½ hours**. In situations where a person is detained for more than a day, on average they are detained for 34 ½ hours.

7.3. In Greece, data shows that in 2021 and 2022, up to 89% of detention cases documented during pushbacks contained minors.

8. We affirm the aforementioned evidence clearly shows that migrants, refugees and asylum seekers are being arbitrarily held in detention sites for short periods of time during pushbacks. During detention migrants, refugees and asylum seekers are effectively being held outside all legal safeguards and without contact to the outside world. Furthermore, testimonies collected from pushback survivors continue to depict tactics used by police to conceal the location, whereabouts and fate of persons subjected to pushbacks.

IV: Concealment of Pushbacks and Detention Amounting to Enforced Disappearance:

Detention registration

9. Across all reporting areas, BVMNs field-based partner organisations have documented significant discrepancies between migrants, refugees and asylum seekers being deprived of their liberty at detention sites, and their registration or their presence being recorded. We affirm that in some locations, the failure to formally register or document the detention of migrants, refugees and asylum seekers is so widespread it is now indistinguishable from official State policy, and we affirm this highlights an effort to systematically conceal the whereabouts of persons during pushbacks.

9.1. In Greece from 2021 to July 2023, pushback testimonies collected from BVMN's field-based partners evidence that registration of migrants, refugees and asylum seekers at detention sites during pushbacks was extremely unlikely. Only five testimonies recalled personal information being taken at a detention site that may be used to register them, with over 96% of other testimonies making no reference to registration or the collection of personal information.

9.2. In Croatia between 2021 and 2022, evidence from pushback testimonies suggests that only 41% of migrants, refugees and asylum seekers subjected to detention during pushbacks may have had their personal details taken. Whilst evidence suggests that it is highly likely that the other 59% were not formally registered due to the evidence of pushback practices committed by the State, we are also concerned with the potential disparity between personal information being taken and being formally registered as detained. As such we expect the real number of persons being detained without registration as significantly higher.

10. We assert that the aforementioned evidence shows a clear and deliberate policy of concealing the whereabouts of migrants, refugees and asylum seekers detained during pushbacks, and shows that both Greece and Croatia are acting in direct variance with Article 17 (3) of the Convention. Furthermore, BVMN has significant concern that even in situations where pushback victims attest that their personal details have been taken, the information is not consistent with the expectation of Article 17(3), or that the details may have been falsified:

10.1. In 2021, No Name Kitchen⁴ documented a pushback case in which a 17 year old, together with nine other people, were detained at a Croatian police station for two-hours during a chain pushback from Slovenia, to Croatia and then Bosnia. The respondent explained that at the Croatian police station they were forced to sign papers giving all of their personal information including their full names, date of birth, country, religion, and addresses. The respondent explained that when the 17 year old filled in his age, an officer responded by beating him on the chest as well as hips; also lifting him up and throwing him down on the ground, then kicking him in his genitals. The officer then proceeded to erase the boys age, and falsify the document to say that the minor was 20 years old.

Secret detention

11. Further supporting State efforts to systematically conceal the whereabouts of people during pushbacks is the increasing use of secret or incommunicado detention. An investigation carried out by BVMN in 2021 found that of the 69 pushback testimonies recalling the detention of migrants, refugees and asylum seekers, in Greece, at least 20.2% demonstrate detention that we affirm would amount to secret or incommunicado detention.

12. The hallmarks of secret and incommunicado detention during pushbacks across the Western Balkans, Greece and Turkey include detention in unofficial or improvised detention sites such as abandoned and derelict buildings, farms and horse stables, and freezer trucks or shipping containers. We affirm that across all locations, the use of secret or incommunicado detention is a tool to facilitate the mass torture, abuse or pushback of migrants, refugees and asylum-seekers, and ensure that their abuse and deprivation of liberty is conceal from any independent safeguards or monitoring activities.

12.1. In 2020, BVMN partner⁵ documented a testimony that recalled a detention site described as ‘an abandoned place’. The respondent reported there were about 7 ‘commandos’ at the site, wearing different uniforms, military clothing of dark green colour, as well as blue uniforms. At this site, described as an ‘abandoned place’, there were about 100 people of different nationalities. The detained group were reportedly transported from the secret detention site to a location along the Evros River, where they were pushed back to Turkey.

13. Furthermore, BVMN continues to document evidence of the failure to provide information to families, lawyers or NGOs, about the whereabouts of the migrants, refugees and asylum seekers detained during pushbacks. BVMN partner organisations have recorded a number of incidents, in which migrants, refugees and asylum seekers had shared their location with lawyers, for fear of being pushed back. In all of the

⁴ Border Violence Monitoring Network. (2021). “They beat them so cleverly, [...] beat them on the chest, the belly, the private area; it will not show the wound or injury, but the man will have so much pain inside”. Reported by No Name Kitchen. Available at:

<https://borderviolence.eu/testimonies/november-6-2021-0000-according-to-the-respondent-the-green-border-with-a-knee-high-river-running-through-it-around-25-kilometer-of-walking-from-the-bosnian-city-of-velika-kladusa-which-he/>

⁵ Border Violence Monitoring Network. (2020). “Pushback from Lagadikia Camp”. Reported by Mobile Info Team. Available at: <https://www.borderviolence.eu/violence-reports/september-16-2020-0000-lagadikia-greece/>

recorded incidents, where lawyers tried to investigate the whereabouts of their clients the police refused information or concealed their whereabouts all together.⁶

13.1. On September 26th 2020, a BVMN partner organisation⁷ recorded a pushback from Greece, in which two men were apprehended at Thessaloniki Bus Station and taken back to Türkiye in a van. The respondent explained that they had given information about their location to a lawyer before being apprehended, for fear of being pushed back. They later learned from their lawyer that they had called all border police stations, including the one they were staying at, but the authorities said their clients were not present. BVMN affirms this clearly shows Greek authorities concealing the whereabouts of a transit group during a pushback that lasted 10 hours from apprehension to the pushback and expulsion across the border to Türkiye.

14. Similar cases were recorded again in 2021 in the Evros region in Greece.⁸ This is inconsistent with Article 17 (2) of the Convention, particularly as lawyers might be summoned to act as an intermediary between the disappeared person and their families. Deliberate concealment of a person's whereabouts and the obstruction of communication with legal officials, also effectively removes those affected from the protection of the law for the duration of the pushback (cf. Article 2 of the Convention). Further to the evidence and testimonies collected by BVMNs field-based member organisations, multiple external organisations, monitoring bodies or investigative news outlets have also affirmed the widespread use of secret or incommunicado detention:

14.1. During a visit by the Committee for the Prevention of Torture to Croatia in 2020⁹, the Committee received reports, and later found corroborating evidence in the form of a police log book, that migrants were detained for many hours including overnight in a “garage” adjacent to the custody area of Korenica Police Station. Similarly, following the CPT visit to Greece in 2020, the Committee noted a “disused or confiscated truck parked just inside the back entrance to the station”—described also as a “container” without windows and lighting—that “smelled of urine” and that that they received consistent and detailed allegations that migrants were held for several hours here.¹⁰

⁶ Border Violence Monitoring Network. (2020). “asylum is in Athens” [and not here]“. Reported by BVMN Partner. Available at: <https://borderviolence.eu/testimonies/october-17-2021-0000-405633-8n-262108-2e/>

⁷ Border Violence Monitoring Network. (2020). “Witnessing torture in the Soufli Police Station”. Reported by BVMN Partner. Available at:

<https://borderviolence.eu/testimonies/september-26-2020-0000-411929-9n-262943-1e-2/> and Border Violence Monitoring Network. (2020). “The system is like this, come back tomorrow”. Reported by BVMN Partner. Available at: <https://borderviolence.eu/testimonies/september-26-2020-0000-411929-9n-262943-1e/>

⁸ Border Violence Monitoring Network. (2021). “We want the international community to know what they are doing to us and we hope that we can go somewhere else. Anywhere where it’s peaceful. If it’s Somalia, I don’t care. We just want peace”. Reported by Josoor. Available at:

<https://borderviolence.eu/testimonies/may-9-2021-2030-tychero-saricaali/>

⁹ Council of Europe (2020). Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. CPT/Inf (2021) 29. Available at: <https://rm.coe.int/1680a4c199>

¹⁰ CPT (2020). Report to the Greece Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. CPT/Inf (2020) 35. Available at: <https://rm.coe.int/1680a06a86>

15. As such, we can affirm that pushbacks not only systematically involve detention but also the systematic concealment of the whereabouts of disappeared persons, at least for a short period of time, by employing secretive and concealed detention sites, including but not limited to, secret police stations, trucks, and cage-like structures. The use of secret detention sites is one element in a greater strategy to conceal the practice of pushbacks, by hiding the whereabouts of those affected.

Destruction of phones

16. BVMNs field-based partner organisations have consistently documented instances of the destruction of phones during pushbacks, which we affirm further contributes to the notion of short-term enforced disappearance in the context of migration. We assert that the destruction of phones is a deliberate tactic used by State authorities to limit the possibility of external communication to lawyers, family members or NGO representatives, hinder the ability of migrants, refugees and asylum seekers to seek assistance or report human rights violations, and ensure that whilst held arbitrarily or outside all legal safeguards, that the whereabouts of the detained remains unknown.

17. Statistics collected between 2021 and 2022 of pushbacks from Croatia and Greece illustrate the severity of this issue. 92% of Croatian pushback testimonies recall destroying or stealing personal belongings, including mobile phones. Similarly, 95% of pushback testimonies in Greece during the same period mention the destruction or theft of phones and other personal belongings. These statistics indicate that the deliberate targeting of communication devices is prevalent across multiple borders, significantly hampering the ability of migrants, refugees and asylum seekers to seek help and document their experiences. We affirm that the well documented pattern of the destruction of phones often occurs during or immediately after arbitrary detention in detention sites and is accompanied by extreme levels of violence.

17.1. In 2021, BVMN partner documented a pushback testimony¹¹ from Croatia to Bosnia in which the respondent explained “We stayed 3 days in jail. We didn’t see any lawyer, they didn’t provide us a translator. They just gave us one bottle of water per day and some bread.” Recalling his experience being pushed back across the border to Bosnia, the respondent stated that “6-7 policemen” “smashed my phone to the ground and forced me to bend and take it. I did it, and while I was bent over, they beat me so much with a tree branch and also with a baton”.

18. The destruction of phones significantly violates migrants' and refugees' rights to communication and access to information. State officials, as documented by BVMNs field-based partner organisations, frequently seize and destroy individuals' personal belongings, identity documents, and mobile phones after apprehension. By doing so, they effectively cut off avenues for communication, geolocating, hinder access to legal representation, impede contact with loved ones, and obstruct efforts to verify their identities.

¹¹ Border Violence Monitoring Network. (2021). “They beat me so much with a tree branch and also with a baton; but worst of all, they took their belt and whipped me.”. Reported by BVMN Partner. Available at: <https://borderviolence.eu/testimonies/september-6-2021-0800-in-close-proximity-to-slovenian-border-8-hours-by-truck-from-a-camp-in-serbia/>

19. We affirm that the destruction of phones is not merely an isolated act but part of a broader strategy¹² employed by State authorities or actors acting on the behalf or with the acquiescence of the State to perpetuate a climate of secrecy and create an environment where the fate and whereabouts of migrants, refugees and asylum seekers remain concealed and undocumented. Therefore we assert that in line with paragraph 33 of the CED General Comment¹³ the seizure and destruction of personal belongings, including mobile phones, after apprehension can result in enforced disappearance by leaving individuals with no means to communicate their whereabouts to relatives or prove their identity.

Obstruction of National Preventive Mechanisms (NPM) and Ombudsperson

20. To prevent the above-mentioned shortcomings with regard to access to fundamental rights and procedural safeguards for migrants, refugees and asylum seekers, national preventive mechanisms (NPM) are mandated to monitor the situation in detention sites and thereby support the implementation of the Optional Protocol to the Convention against Torture. BVMN asserts that evidence by both institutional oversight mechanisms including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹⁴ as well as the mandate holders themselves suggest active obstruction of their work.

21. Under the mandate of the national preventive mechanism, the Croatian Ombudsperson has a clear mandate to examine all issues related to the treatment of migrants deprived of their liberty. Yet on multiple occasions, the Ombudsperson has criticised the Ministry of Internal Affairs for obstructing their work. The 2018, 2020 and 2021 report on the work of the NPM,¹⁵ mention multiple occasions upon which the Ombudsperson was denied access to information specifically regarding the treatment of migrants and case

¹² The Croatian Ombudswoman published an anonymous complaint by police officers that stated they were ordered to “return everyone without papers, no traces, take money, break mobile phones or take for ourselves, and forcefully return refugees to Bosnia.” See: Border Violence Monitoring Network. (2019). Complaint by Croatian police officers who are being urged to act unlawfully. Available at:

<https://borderviolence.eu/reports/complaint-by-croatian-police-officers-who-are-being-urged-to-act-unlawfully/>

¹³ Committee on Enforced Disappearances. General Comment on Enforced Disappearances in the Context of Migration. Draft 1. Available at:

<https://www.ohchr.org/en/treaty-bodies/ced/consultation-concept-note-general-comment-no-1-enforced-disappearances-context-migration>

¹⁴ Council of Europe. 2021. CPT/Inf (2021) 29. Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020. <https://rm.coe.int/1680a4c199>

¹⁵ Republic of Croatia, Croatian Ombudsperson, Report for 2018, Zagreb, March 2019. Available at:

https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5fc7950f7fc_a11606915343 and;

Republic of Croatia, Croatian Ombudsperson, Report for 2021, Zagreb, March 2022. The entire Report of the Ombudsman for 2021. Available at: <https://www.ombudsman.hr/hr/trazitelji-medunarodne-zastite-i-iregularni-migranti-3/>

data during unannounced visits¹⁶ to certain police stations, preventing the Ombudsperson to effectively fulfil their mandate.¹⁷

22. BVMN affirms that any obstruction to the work of Ombudspersons responsible for the implementation of National Preventive Mechanisms (NPMs) contributes to the concealment of enforced disappearance of migrants, refugees and asylum seekers. NPMs are mandated to regularly monitor the treatment of those deprived of their liberty, including migrants, refugees and asylum seekers. Active obstruction and or disregard of their work in specific cases, inhibits an important accountability mechanism, prevents active investigation in cases of collective expulsion and enforced disappearance and thus allows for the active concealment of the whereabouts of those deprived of their liberty and the smooth facilitation of illegal pushbacks.

V. Concluding Remarks

23. BVMN concludes that the aforementioned elements combine to affirm that pushbacks constitute in itself a deprivation of liberty, as affected persons are unable to leave the site of illegal apprehension or leave the pushback carried out by the State party. The evidence further shows that active concealment of the whereabouts of the affected persons is a constitutive element of pushbacks, regardless of the duration of detention. This term short-term enforced disappearance thus effectively describes the experiences faced by refugees and migrants both before, during and after their illegal and forced removal from territory.

24. Furthermore, we are deeply concerned with what we affirm is the emergence of a systematic practice to conceal the short-term enforced disappearance of migrants, refugees and asylum seekers including through the ongoing and widespread attempt to conceal pushbacks, refusal to acknowledge the whereabouts of pushback victims and the deliberate obstruction of preventive mechanisms.

25. As such, BVMN recommends to the Committee recognise that short-term enforced disappearances occur in the contexts of migration, at borders and against migrants, refugees and asylum seekers in transit and issue appropriate recommendations to State parties to prevent such practice.

¹⁶ Under articles 4, 19 and 20 of Optional Protocol to the Convention against Torture (OPCAT) and Art. 3 and 5 of the Act on the National Preventive Mechanism (ANPM), the Ombudswoman is authorised to make unannounced visits to places of deprivation of liberty, and to access any data on such treatment.

¹⁷ Border Violence Monitoring Network. 2023. Croatia. Submission to the European Commission Rule of Law Report. Available at: <https://borderviolence.eu/app/uploads/CroatiaSubmission.pdf>