**The systematic denial of access to regularisation mechanisms for irregular migrants detained and pushed back at external EU borders**

**Input for the report to the 53rd session of the Human Rights Council by the UN Special Rapporteur on Migrants on: How to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants**

Submitted by:

Border Violence Monitoring Network

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1. **Reporting organisation**
2. The Border Violence Monitoring Network (BVMN) is a coalition of organisations working to document illegal pushbacks, police violence and detention along the European Union’s external borders in the Western Balkans, Greece and Turkey since the formal closure of the route in 2016. The collection of data on illegal pushbacks, police violence and detention is done by a consortium of independent voluntary field-experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network. As part of this work we record barriers to accessing international protection experienced by irregular migrants during their detention and/or pushback across EU borders.
3. **Executive summary**
4. BVMN asserts that pushbacks and arbitrary detention of irregular migrants are part of broader attempts by the EU to prevent irregular migrants from regularising their stay in Europe, reflected in recent policy developments including heightened surveillance at external EU borders, [[1]](#footnote-1) the extension of border control activities into non-member states, [[2]](#footnote-2) and the narrowing of legal migration pathways.
5. Member organisations of BVMN are based in the Western Balkans, Greece, and Turkey, most of which are countries of transit for people seeking international protection in EU Member States. The Western Balkan route is the most active irregular migratory route to Europe, with over 145,600 irregular arrivals recorded in 2022 by the European Border and Coast Guard Agency (Frontex). [[3]](#footnote-3)
6. This submission presents evidence collected by BVMN and its partners of the barriers to regularisation faced by irregular migrants entering Europe through the Western Balkan route. The evidence shows that migrants including women and children are systematically denied access to international protection at external EU borders and subsequently experience human rights violations during their arbitrary detention and pushback.
7. **Barriers to regularisation faced by irregular migrants at external EU borders**
	1. **Evidence of the denial of access to protection mechanisms for irregular migrants at external EU borders**

 **Explanatory note:** The practice of systematically detaining and pushing back migrants who cross EU borders irregularly in addition to increasingly lengthy and complicated application procedures denies irregular migrants the opportunity to regularise their stay through international protection claims. BVMN asserts that practices leave irregular migrants in limbo and damage their trust in regularisation mechanisms such as asylum procedures, thus decreasing the likelihood of future attempts to regularise their stay.

1. Since 2017, BVMN has documented 709 pushback testimonies from individuals who expressed an intention to regularise their stay by applying for international protection, prior to being illegally pushed back. These testimonies record the respondent’s pushback in larger groups totalling 11,607 persons.
	1. For instance, a testimony collected by BVMN partner Blindspots recalls how the respondent was pushed back from Croatia to Bosnia Herzegovina in late December 2022, despite expressing an intention to apply for asylum. The respondent recalled being apprehended by police officers while transiting through a forest near Vojnic. The respondent described how he asked the officers if they could help him with getting “asylum papers,” but the officers answered that they had no power to do this and subsequently pushed the respondent back to Bosnia. [[4]](#footnote-4)
	2. An anonymous partner of BVMN took testimony from a 32 year-old Algerian national who was pushed back from Northern Macedonia to Greece in early November 2022. Prior to their pushback, the respondent explained that they were detained in a “camp” where a Syrian translator was present. The respondent explained that his friend asked the Syrian translator if it was possible to apply for asylum and received the following reply: “yes, it’s possible, but for sure you’re gonna spend two years in prison and then after this two years they might push you back.” [[5]](#footnote-5)
	3. A testimony collected by BVMN partner No Name Kitchen reports how the respondent, a 17 year-old man from Afghanistan, was apprehended within a transit group of three minors by officials in Croatia and pushed back to Bosnia in early July 2022. The respondent reported how the group expressed their intention to apply for asylum immediately after their apprehension but were denied this by the officials detaining them. The respondent explained: “We were arrested, we told the police that we want to seek asylum in Croatia. Without listening to us, they started beating us.” [[6]](#footnote-6)
	4. A testimony collected by an anonymous BVMN partner documents how the respondent, a 38 year-old man from Syria, was apprehended on 7th August 2022 by officials in a white jeep marked with “Police”. The respondent was transferred to an unidentified detention state, where he asked to claim asylum and was reportedly told “no, you are not allowed to.” In response to this, the respondent said: “I need to go back to Germany because my life is there, my papers are there,” but the officials detaining him proceeded to push him back to Greece.
2. Further, BVMN has documented evidence of the unlawful confiscation and destruction of identity documents or documents authorising entry or stay, in direct violation of Article 21 of the International Convention on the Protection of the Rights of Migrant Workers. [[7]](#footnote-7)
	1. For instance, in 2018 BVMN partner Balkan Info Van documented a pushback testimony in which the respondent, a 36 year-old man from Syria, reported having his phone, powerbank and passport seized while being detained by Slovenian officials whom he identified as the police. When the respondent asked for his passport back, the officials reportedly tore up his passport, threw it away, and beat him with a baton. The respondent also asked to apply for asylum but was denied this by the officials. [[8]](#footnote-8)
3. BVMN asserts that the continued, systematic and deliberate destruction of property actively obstructs regularisation processes by denying irregular migrants the documents they need in order to file protection claims or regularise their stay through other means.
4. BVMN asserts that the evidence of systematic denial of access to asylum procedures and the *de facto* policy of automatic detention and pushback of irregular migrants at external EU borders serves to perpetuate irregularity by leaving people who attempt to cross borders irregularly in limbo or fearful of expressing intention to apply for protection. As pushbacks are often carried out by the very actors responsible for opening pathways to protection, survivors are unlikely to trust their violators with their protection claim.
	1. **Evidence of human rights violations experienced by irregular migrants denied access to protection mechanisms**
5. Since 2017, BVMN has documented 1,667 testimonies reporting the arrest, detention and forcible removal of over 25,000 migrants. [[9]](#footnote-9) Our evidence shows that irregular migrants who are denied access to asylum are frequently subjected to torture or cruel, inhuman or degrading treatment of punishment during their arbitrary detention and pushback. [[10]](#footnote-10)
6. BVMN notes the systemic nature of this issue, with pushbacks and denial of access to international protection widely documented by NGOs and other international monitoring bodies. For instance, during 2022, the Protecting Rights at Borders (PRAB) initiative collected evidence of pushbacks affecting 5,756 people from 12 organisations working in eight European states. [[11]](#footnote-11)
7. BVMN notes that the practice of detaining and expelling irregular migrants without recourse to international protection mechanisms is in direct breach of international law in addition to Articles 16 and 22 of the International Convention on the Protection of the Rights of All Migrants Workers. [[12]](#footnote-12)
8. Additionally, BVMN notes the multiple additional human rights violations occurring during detention and pushbacks which breach other Articles of the Convention, for instance the highly concerning practice of using irregular migrants as police auxiliaries during illegal pushback operations, [[13]](#footnote-13) which directly breaches Article 11 of the Convention. [[14]](#footnote-14)
9. BVMN additionally asserts that, in cases where irregular migrants experience multiple pushbacks across their transit, repeated incidents of police violence may impact their decision to verbalise asylum claims. We are particularly concerned that irregular migrants may refrain from expressing an intention to apply for asylum for fear of verbal and physical abuse as well as torture, given the multiple testimonies collected by BVMN and its partners which record this treatment following the respondent expressing a desire to apply for protection.
10. **Evidence of violations against undocumented migrant women and children**
11. BVMN has consistently documented evidence of violations against undocumented women and children who are denied access to regularisation mechanisms and international protection, arbitrarily detained and pushed back. In 46% of pushback testimonies collected by BVMN since 2017 the presence of minors was explicitly mentioned, while in 22% women were reportedly present.
	1. For instance, in January 2022, [[15]](#footnote-15) BVMN partner Josoor documented a pushback from Greece in which the respondent reported how he and his friends were held in a dirty cell which measured approximately five by three metres and already had 60 people in it. Three women and seven minors were reportedly among the group detained in the cell.
	2. Another testimony taken by Josoor in March 2022 documents how the respondent was detained by Greek authorities in a cell along with 60 people, reportedly including four women, one of whom was pregnant, and 13 minors, 11 of whom were unaccompanied. The respondent reported that no food or water was offered and stated: “Even though we asked for some water for the kids and the pregnant woman, the uniformed men screamed at us. They told us: ‘If you don’t stop making noise, we will kill you all!’”
12. BVMN affirms that the indiscriminate use of pushbacks against women and children and the systematic denial of asylum claims, both at first point of entry and whilst detained at police stations or detention centres, directly impacts on regularisation policies. Women and minors in irregular situations experience particular barriers to accessing regularisation processes which are not recognised by States that perpetuate automatic pushbacks without consideration of individuals’ vulnerabilities and potential protection needs.
13. **Evidence of the denial of access to translation and interpretation services for irregular migrants in detention**
14. Since 2017, BVMN has documented 592 testimonies from irregular migrants detained prior to being pushed back, of which 71% recall being detained without being granted access to adequate interpretation or translation assistance, a direct breach of Article 16 of the Convention on Migrant Workers. [[16]](#footnote-16) BVMN asserts that the denial of translation assistance makes it hugely challenging for irregular migrants to challenge the lawfulness of their detention or assert their rights to international protection.
	1. In 2020, BVMN collected testimony from a 33 year-old respondent from Morocco, who was detained in a police station in Kalamaria, near Thessaloniki. On arrival at the police station the policemen brought some documents for the respondent to sign. The documents were written in Greek and there was no interpreter present. The respondent could only speak Greek and could not read or write it, so he did not know what he was signing. He was reportedly convinced by the policemen that these were release papers and part of a regular procedure, so he signed them. After that, his fingerprints and photograph were taken. The respondent was subsequently detained for three months at the Paranesti (Drama) PRDC, before reportedly being pushed back to Turkey together with 120 other people. [[17]](#footnote-17)
	2. BVMN partner No Name Kitchen collected testimony from a 24 year-old Bolivian woman who was pushed back from Croatia to Bosnia in early November 2022. The respondent reported being apprehended and taken to what she described as a “hut” for questioning. There, she was reportedly taken into a room and searched. At no point was the respondent offered a translator or explained why she was being detained. [[18]](#footnote-18)
15. Reports published by the Greek Council for Refugees and Asylum Information Database (2019, 2021), [[19]](#footnote-19) Amnesty International (2020), [[20]](#footnote-20)  and the Greek Ombudsman (2020) [[21]](#footnote-21) draw similar conclusions regarding the widespread and systematic denial of interpretation services to detained irregular migrants.
16. **Evidence of irregular migrants being detained in incommunicado conditions without recourse to legal assistance to regularise their stay**
17. Testimonies collected by BVMN demonstrate how irregular migrants are systematically prevented from regularising their stay due to States deliberately denying them access to a lawyer during their detention and routinely confiscating their mobile phone during detention and pushback operations. [[22]](#footnote-22) Further, BVMN asserts that irregular migrants are often held in conditions which we affirm could amount to incommunicado detention.
	1. In 2020, BVMN documented a pushback testimony of a Kurdish-Turkish national who during the pushback from Greece was held in secret or incommunicado detention. The respondent explained that whilst held in detention his Greek lawyer called the border police stations, but since the Greek police had refused to formally register the respondent and was detaining him incommunicado, the lawyer was not successful in locating him. [[23]](#footnote-23)
	2. In 2020, BVMN documented another pushback of 3 Kurdish-Turkish nationals, who during the pushback from Greece were held in secret or incommunicado detention. The respondent recalled that their Greek lawyer had called all the police stations in the Evros border region to ask for them, including the one they were kept at, but the officers told the lawyer that they were not there. [[24]](#footnote-24)
18. **Recommendations for the enhancement of regularization mechanisms and prevention of situations of vulnerability for irregular migrants at EU borders**

BVMN respectfully requests the Special Rapporteur on Migrants to highlight the following issues and recommendations in its report to the 53rd session of the Human Rights Council, to support the development of an international set of guidelines on regularisation mechanisms and the prevention of situations of vulnerability:

1. End practices of pushbacks and arbitrary detention of irregular migrants at external EU borders block people from regularising their stay by claiming international protection including by:
	1. Establishing genuinely independent, impartial and effective national monitoring mechanisms in EU Member States to prevent situations of vulnerability for irregular migrants, to hold pushback perpetrators to account and carry out regular monitoring visits to sites where irregular migrants are detained.
2. Ensure migrants who express an intention to regularise their stay in EU Member States are able to access their fundamental rights in relation to international protection including by:
	1. Being able to access information on their rights in relation to international protection and the possibilities for regularisation in a language they understand, including via indiscriminate access to interpretation services.
	2. Being able to access legal services, including to claim their rights to apply for international protection or assert their rights in case of detention, torture or unlawful refoulement.
	3. Being able to access key documentation proving their legal identity, including by making documentation available to migrants who have expressed a desire to file an asylum application with a document proving their intention.
	4. Ensuring access to special protective measures for asylum seekers with particular vulnerabilities, including unaccompanied minors and women.
1. European Commission. 2022. ‘Migration Routes: Commission proposes Action Plan for cooperation with Western Balkans to address common challenges.’ Available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7447> [Accessed 13/02/2023]

Statewatch. 2021. ‘Electronic surveillance network to safeguard Greece’s borders at Evros.’ Available at: <https://www.statewatch.org/statewatch-database/electronic-surveillance-network-to-safeguard-greece-s-borders-at-evros/> [Accessed 13/02/2023] [↑](#footnote-ref-1)
2. Statewatch. 2022. ‘Tracking the Pact: EU seeks to seal off Balkan Route with expanded Frontex deployments.’ Available at:

<https://www.statewatch.org/news/2022/october/tracking-the-pact-eu-seeks-to-seal-off-balkan-route-with-expanded-frontex-deployments/> [Accessed 13/02/2023] [↑](#footnote-ref-2)
3. Frontex. 2023. ‘EU’s external borders in 2022: Number of irregular border crossings highest since 2016.’ Available at: <https://frontex.europa.eu/media-centre/news/news-release/eu-s-external-borders-in-2022-number-of-irregular-border-crossings-highest-since-2016-YsAZ29> [Accessed 13/02/2023] [↑](#footnote-ref-3)
4. BVMN. 2022. ‘The police that day were everywhere, you could not walk one kilometre in the forest without seeing a police car.’ Available at: <https://www.borderviolence.eu/violence-reports/december-31-2022-1500-45-226807-15-951749/> [Accessed 10/02/2023] [↑](#footnote-ref-4)
5. BVMN. 2022. ‘Yes it’s possible [to claim asylum] but for sure you’re gonna spend two years in prison and then after this two years they might push you back.’ Available at: <https://www.borderviolence.eu/violence-reports/november-3-2022-0300-near-valandovo-north-macedonia/> [Accessed 10/02/2023] [↑](#footnote-ref-5)
6. BVMN. 2022. ‘We told the police that we want to seek asylum. Without listening to us, they started beating us.’ Available at: <https://www.borderviolence.eu/violence-reports/july-8-2022-0600-border-near-velika-kladusa/> [Accessed 10/02/2023] [↑](#footnote-ref-6)
7. Article 21: “It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.” [↑](#footnote-ref-7)
8. BVMN. 2018. ‘“When the respondent asked for his passport back, the officers teared up his document [...]”.’ Available at: <https://www.borderviolence.eu/violence-reports/november-8-2018-0230-vukova-gorica-croatia/> [Accessed 13/02/2023] [↑](#footnote-ref-8)
9. These testimonies are publicly accessible on our online database: <https://www.borderviolence.eu> [↑](#footnote-ref-9)
10. BVMN. 2021. ‘Annual Torture Report 2020.’ Available at: <https://www.borderviolence.eu/annual-torture-report-2020/> [Accessed 13/02/2023] [↑](#footnote-ref-10)
11. Protecting Rights at Borders/Greek Council for Refugees. 2023. ‘Beaten, punished and pushed back.’ Available at: <https://www.gcr.gr/en/ekdoseis-media/reports/item/2097-beaten-punished-and-pushed-back> [Accessed 13/02/2023] [↑](#footnote-ref-11)
12. Article 16: “4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.”

Article 22: “1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.” [↑](#footnote-ref-12)
13. This practice has been identified in a number of testimonies collected by BVMN, in addition to reports by other NGOs:

BVMN. 2021. ‘If anyone can speak English, you can come work for them [Greek police] for six months and then you will be given papers for asylum.’ Available at: <https://www.borderviolence.eu/violence-reports/april-8-2021-0600-island-near-karayusuflu/> [Accessed 8/10/2022];

BVMN. 2021. ‘I didn’t want to look at them – I didn’t want to get beaten anymore.’ Available at: <https://www.borderviolence.eu/violence-reports/august-31-2021-2200-close-to-edirne-turkey/> [Accessed 8/10/2022];

Human Rights Watch. 2022. ‘“Their Faces Were Covered” Greece’s Use of Migrants as Police Auxiliaries in Pushbacks.’ Available at: <https://www.hrw.org/report/2022/04/07/their-faces-were-covered/greeces-use-migrants-police-auxiliaries-pushbacks> [Accessed 8/10/2022];

The Guardian. 2022. ‘Revealed: Greek police coerce asylum seekers into pushing fellow migrants back to Turkey.’ Available at: <https://www.theguardian.com/global-development/2022/jun/28/greek-police-coerce-asylum-seekers-pushbacks-migrants-turkey> [Accessed 8/10/2022] [↑](#footnote-ref-13)
14. Article 11: “1. No migrant worker or member of his or her family shall be held in slavery or servitude; 2. No Migrant worker or member of his or her family shall be required to perform forced or compulsory labour.” [↑](#footnote-ref-14)
15. BVMN. 2022. ‘We were lucky to find a small pool of water and we drank from it like we were animals.’ Available

at: <https://www.borderviolence.eu/violence-reports/january-19-2022-0900-orestias-to-karakasim/> [Accessed

23/11/2022 [↑](#footnote-ref-15)
16. Article 16: “5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.” [↑](#footnote-ref-16)
17. BVMN. 2020. ‘The police, they come to the room and they just beating people, beating […] they didn’t do anything.’ Available at: <https://www.borderviolence.eu/violence-reports/july-20-2020-0200-at-the-greek-turkish-border-near-meric/> [Accessed 06/09/2022] [↑](#footnote-ref-17)
18. BVMN. 2022. ‘All our suffering has made them laugh.’ Available at: <https://www.borderviolence.eu/violence-reports/november-3-2022-0300-near-sturlic-bosnia/> [Accessed 10/02/2023] [↑](#footnote-ref-18)
19. Asylum Information Database and the Greek Council for Refugees. 2021. ‘Country Report: Greece (2021 Update).’ Available at: <https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf> [Accessed 06/09/2022]; Asylum Information Database and the Greek Council for Refugees. 2019. ‘Country Report: Greece (2019 Update).’ Available at: <https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_gr_2019update.pdf> [Accessed 06/09/2022] [↑](#footnote-ref-19)
20. Amnesty International. 2020. ‘Caught in a political game: asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe’s failures.’ Available at: <https://www.ecoi.net/en/file/local/2027564/EUR0120772020ENGLISH.PDF> [Accessed 13/09/2022] [↑](#footnote-ref-20)
21. Greek Ombudsman. 2020. ‘Returns of third-country nationals – Special Report 2020.’ Available at: <https://www.synigoros.gr/en/category/default/post/returns-of-third-country-nationals-special-report-2020> [Accessed 06/09/2022] [↑](#footnote-ref-21)
22. BVMN additionally asserts that the confiscating of phones constitutes a breach of Articles 14 and 15 of the Convention: Art. 14: “No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, , correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks”; Art. 15: “No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.” [↑](#footnote-ref-22)
23. BVMN. 2020. ‘Asylum is in Athens [and not here].’ Available at:
<https://www.borderviolence.eu/violence-reports/october-17-2021-0000-405633-8n-262108-2e/> [Accessed 11/09/2022] [↑](#footnote-ref-23)
24. BVMN. 2020. ‘Witnessing torture in the Soufli Police Station.’ Available at: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e-2/> [Accessed 22/11/2022] [↑](#footnote-ref-24)