

**The impact of illegal pushbacks and arbitrary detention on the rights of refugees, stateless persons and internally displaced persons (IDPs) who are victims of trafficking in persons or persons at risk of trafficking**

**Input for the report to the 53rd session of the Human Rights Council by the UN Special Rapporteur on trafficking in persons on: Access to international protection of victims of trafficking in persons or persons at risk of trafficking**

Submitted by:  
Border Violence Monitoring Network

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## I. Reporting organisation

1. 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. Member organisations are based in transit countries along the Balkan route where migrants are frequently left stranded due to a lack of legal and safe migratory routes, and vulnerable to human rights violations including police violence, pushbacks and human trafficking.

## II. Executive summary

2. BVMN is highly concerned at reports documented by its partners of the widespread detention and pushback of asylum seekers and refugees along the Western Balkan route, which we assert directly hinder the identification and protection of victims or potential victims of human trafficking, including of women and children.
3. This submission presents evidence of systematic pushbacks, arbitrary detention and ill-treatment of refugees, stateless persons and international displaced persons (IDPs) at external EU borders, documented by BVMN and its partners since 2017. An analysis of this evidence shows that EU States are not only failing to meet their obligations to protect victims and potential victims of human trafficking; further, States are actively exposing refugees and stateless persons to abuse and violence during pushback operations, which further increases their vulnerability to trafficking.
4. BVMN is particularly concerned at reports of States' failure to prevent torture or other cruel, inhuman or degrading treatment or punishment of victims of trafficking or persons at risk of trafficking, including highly disturbing reports of women and children being exposed to such treatment.
5. Given the systematic nature of pushback practices, BVMN is additionally concerned that fear of pushbacks and arbitrary detention is further preventing victims of trafficking from presenting to authorities to support. As highlighted by the Special Rapporteur, fear of expulsion may lead to victims choosing to remain in an exploitative situation rather than be illegally pushed back to a neighbouring State.<sup>1</sup>
6. BVMN echoes concerns expressed by the Special Rapporteur<sup>2</sup> about the growing tendency to place migration within the law enforcement paradigm and to present restrictive migration-related

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<sup>1</sup> HRC. 2018. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. HRC 73rd session.

<sup>2</sup> HRC. 2020. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. HRC 75th session.

measures as part of the fight against organised crime, including trafficking in persons, with little attention given to the human rights implications of such policies against migrants and trafficked persons.

### **III. Failure of States to identify and protect victims of trafficking or persons at risk of trafficking in the context of arbitrary detention and pushbacks**

7. BVMN has documented widespread reports of asylum seekers and refugees being detained and pushed back, often in secretive conditions, without formal registration of their protection claims or identification of vulnerabilities including in relation to victims or potential victims of trafficking.
8. Since 2017, BVMN has documented over 1,500 testimonies reporting the arrest, detention and forcible removal of 24,990 migrants by persons or groups acting with the authorisation, support or acquiescence of EU Member States, frequently in conditions which conceal the whereabouts of migrants and place them outside the protection of the law.<sup>3</sup>
9. 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.<sup>4</sup>
10. A report by the ICMPD<sup>5</sup> found that restrictive measures and the denial of asylum often fail to prevent illegal migration but rather result in more people seeking irregular migration routes and resorting to the services of traffickers in order to be able to stay in or arrive at a country of destination.
11. While the Special Rapporteur on Trafficking has previously highlighted the impacts of return procedures on the identification of victims and potential victims of trafficking,<sup>6</sup> BVMN asserts that identification is even less likely to occur in pushback operations, which involve the indiscriminate and informal expulsion of migrants, often in large groups and with the use of disproportionate force.
12. BVMN is highly concerned that the informal nature of pushback operations increases the risk of re-trafficking. Not only are trafficking victims not identified during pushback operations; they are subsequently abandoned in neighbouring States without access to legal advice, opportunities to regularise their stay, or recourse to psychological or material support.

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<sup>3</sup> These testimonies are publicly accessible on our online database: <https://www.borderviolence.eu>

<sup>4</sup> 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]

<sup>5</sup> Forin, Roberto & Healy, Claire. 2018. *Trafficking Along Migration Routes to Europe: Bridging the Gap between Migration, Asylum and Anti-Trafficking*. Vienna: ICMPD.

<sup>6</sup> HRC. 2018. *Report of the Special Rapporteur on torture*. HRC 73rd session.

13. BVMN expresses further concern that pushback operations are reported as carried out by police or military officials, who lack knowledge concerning trafficking and the implementation of counter-trafficking measures, and often use violence in the form of beatings, kicking, threats, sexual assault, dog attacks and psychological abuse. There is thus a high risk of traumatising or re-traumatising of trafficking victims through pushback operations, in addition to the creation of new vulnerabilities to trafficking for all individuals who are pushed back.

**A. Evidence of the failure to identify and provide early support for women and children who are victims of trafficking or at risk of trafficking**

14. In her 2020 report to the Human Rights Council the Special Rapporteur noted that, as an essential component of the right to remedy, States have to ensure equal and non-discriminatory access to such a right, including by ensuring that all investigations, prosecutions and other mechanisms are child and gender-sensitive and avoid trauma, revictimization and stigmatization.<sup>7</sup>
15. BVMN has consistently documented evidence of violations against undocumented women and children who are denied access to forms of international protection including counter-trafficking measures, 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.
- a. For instance, in January 2022,<sup>8</sup> 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.
  - b. 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!’”
16. BVMN is highly concerned that the violent and indiscriminate manner in which pushbacks are carried out utterly fails to ensure the identification and protection of women and minors, including those who have been trafficked or are at risk of trafficking, exposing them to re-trafficking or other forms of exploitation.

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<sup>7</sup> Basic principles on the right to an effective remedy for victims of trafficking in persons, para. 7 (h). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 12.

<sup>8</sup> 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]

#### **IV. Failure of States to prevent torture or other cruel, inhuman or degrading treatment or punishment of victims of trafficking or persons at risk of trafficking**

17. In her 2020 report the Special Rapporteur on Trafficking noted that States should ensure that the risks of trafficking and re-trafficking are adequately evaluated when a decision is made on return and that no person, regardless of their status, is returned to a place where there are grounds to believe that they would be at risk of being subject to torture or other cruel, inhuman or degrading treatment or punishment, or other serious human rights violations, including trafficking.<sup>9</sup>
18. Evidence collected by BVMN shows that refugees, asylum seekers and potential victims of trafficking who are denied access to asylum are frequently subjected to torture or cruel, inhuman or degrading treatment or punishment during their arbitrary detention and pushback.<sup>10</sup> The physical and psychological impact of these experiences may put victims of pushback at further risk of being trafficked or re-trafficked.
19. BVMN notes that, in addition to violating States' counter-trafficking obligations, the practice of detaining and expelling refugees, asylum seekers and stateless persons without recourse to 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.<sup>11</sup>
20. BVMN additionally asserts that, in cases where migrants experience multiple repeated incidents of police violence, this may impact their decision to verbalise claims for support relating to their experiences of trafficking.

#### **V. Failure of States to provide right to remedy to victims of trafficking or potential victims of trafficking in the context of pushbacks**

21. Within international law victims of trafficking are entitled to remedies by virtue of their status as victims of human rights violations and victims of crime. Many international human rights instruments reflect the principle that victims of human rights violations have a right to an effective remedy.<sup>12</sup>

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<sup>9</sup> HRC. 2020. *Report of the Special Rapporteur on torture*. HRC 75th session.

<sup>10</sup> BVMN. 2021. 'Annual Torture Report 2020.' Available at: <https://www.borderviolence.eu/annual-torture-report-2020/> [Accessed 13/02/2023]

<sup>11</sup> 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."

<sup>12</sup> See, e.g., the Universal Declaration of Human Rights (art. 8, 10), the International Covenant on Civil and Political Rights (ICCPR) (art. 2(3)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 83), the International Convention on the Elimination of all Forms of Racial Discrimination (art. 6) and the Convention on the Rights of Persons with Disabilities (art.13). (Several ILO Conventions also have such provisions, but they are focused on specific human rights violations and not on violations generally.) Similar provisions are found in regional instruments: see, for e.g. European Convention on Human Rights (art.13), African Charter on Human and People's Rights (art. 7(a)), American Convention on Human Rights (art. 25).

22. Echoing an Issue Paper from by UN Inter-Agency Coordination Group Against Trafficking in Persons (ICAT),<sup>13</sup> BVMN asserts that efforts to provide effective remedies must include efforts to remove legal and procedural barriers by ensuring that trafficked people receive the information, support and assistance they need to access remedies.
23. Contrary to the aforementioned regulations, BVMN asserts that the conditions in which migrants are detained and illegally pushed back across international borders create multiple barriers to potential victims of trafficking accessing the right to remedy.

**A. Evidence of failure to provide access to legal information, representation or translation assistance to potential victims of trafficking in detention**

24. BVMN is deeply concerned at widespread reports of EU States arbitrarily detaining asylum seekers, refugees and stateless persons including potential victims of human trafficking, without granting them access to legal information or advice during their detention period.
25. Testimonies collected by BVMN since 2017 demonstrate how migrants including refugees, asylum seekers and stateless persons are systematically detained without explanation, forced to sign documents in a language they do not understand, and refused access to legal advice or representation.
- a. In 2023, BVMN documented a pushback from Croatia to Serbia involving a Moroccan national. The respondent recalled being apprehended and taken to a police station, along with four other people, where they were forced to sign five documents in a language they were unable to understand, without any translation assistance. The respondent's group was reportedly detained for at least 20 hours, before being taken to a court, and without being granted access to a legal representative at any point. The group was given the option of being detained for a further 10 days or paying a fine. An explanation for their apprehension and detention was not provided at any point.
  - b. In 2020, BVMN documented another pushback testimony of two Kurdish-Turkish nationals, who during a pushback from Greece to Turkey were held at a police station and forced to sign a document without being told why they had to do so. The respondents explained that before being apprehended, they had given information about their location to a Greek lawyer. The respondents explained that the lawyer attempted to call all police stations in Evros to get in contact with them, but the officials detaining them reportedly

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<sup>13</sup> Inter-Agency Coordination Group against Trafficking in Persons. 2016. *Providing Effective Remedies for Victims of Trafficking in Persons*. New York.: United Nations.

told the lawyer they were not at the station.<sup>14</sup> A similar incident was documented in the same region a few weeks later.<sup>15</sup>

26. BVMN notes international guidelines which stipulate that all victims of trafficking should be provided with information in a language they can understand.<sup>16</sup> We assert that, in direct variance to international guidelines, migrants are routinely denied access to information in a language they can understand, and refused access to interpreters and translation assistance during their arbitrary detention and pushback.
27. Since 2017, BVMN has documented 592 testimonies from refugees, asylum seekers and stateless persons detained prior to being pushed back, of which 71% recall being detained without being granted access to adequate interpretation or translation assistance.<sup>17</sup> BVMN asserts that the denial of translation assistance makes it hugely challenging for potential victims of trafficking to understand their rights or challenge their arbitrary detention.
  - a. 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.<sup>18</sup>
  - b. 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

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<sup>14</sup> BVMN. 2020. ‘Witnessing Torture at Soufli Police Station.’ Available at: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e-2/> [Accessed 27/02/2023]

<sup>15</sup> 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 27/02/2023]

<sup>16</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 6 (5). See also United Nations Office on Drugs and Crime, Model Law against Trafficking in Persons, art. 19 (2), which states that information should be provided in a language that the victim understands. If the victim cannot read, he or she should be briefed by the competent authority.

<sup>17</sup> 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.”

<sup>18</sup> 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 27/02/2023]

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.<sup>19</sup>

28. Further evidencing this trend, reports published by the Greek Council for Refugees and Asylum Information Database (2019, 2021),<sup>20</sup> Amnesty International (2020),<sup>21</sup> and the Greek Ombudsman (2020)<sup>22</sup> draw similar conclusions regarding the widespread and systematic denial of interpretation services to detained migrants, including victims of trafficking or persons at risk of trafficking.

### **B. Evidence of failure to provide physical and psychological care to potential victims of human trafficking**

29. BVMN is highly concerned at the indiscriminate ill-treatment of detained migrants, including the denial of physical and psychological care to trafficking victims and those at risk of trafficking, which is a direct violation of their right to remedy.
30. For instance, in the period 2020-2022, BVMN collected 49 testimonies evidencing the Greek State's failure to provide appropriate access to medical care to refugees, asylum seekers and stateless persons in detention.
- a. In 2022, BVMN collected testimony from a respondent detained in a detention site in Greece. While recounting their experience in detention, the respondent explained that: "Some people just cut their bodies but they [the authorities detaining them] don't do anything to them. So, they don't support them with mental issues or psychological issues, all these things."<sup>23</sup>

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<sup>19</sup> 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]

<sup>20</sup> 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](https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf) [Accessed 27/02/2023]; 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](https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_gr_2019update.pdf) [Accessed 27/02/2023]

<sup>21</sup> 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/EUR012072020ENGLISH.PDF> [Accessed 27/02/2023]

<sup>22</sup> 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 27/02/2023]

<sup>23</sup> BVMN. 2023. Dark Rooms, Degrading Treatment And Denial: The Use Of Violence In Greece's Pre-Removal Detention Centres. Available at: <https://www.borderviolence.eu/detention-violence-greece/>

31. In November 2021,<sup>24</sup> Oxfam and the Greek Council for Refugee published a report on the administrative detention of foreign nationals and detention conditions in Greece, including case studies of foreign nationals that were denied access to medical assistance by the Greek authorities in detention.
- a. In March 2021,<sup>25</sup> an individual, who was detained in Kos, had experienced an ‘intense pain’ in her left eye and had asked the police for assistance. The authorities ignored her request, and she was only able to receive medical examination and care through the assistance and referral from a legal aid actor. The individual was diagnosed with possible glaucoma and she was in a severe psychological state. Her medical condition allowed her for an objection against her detention measure before the Administrative Court of Rhodes. The objection was overruled with the conclusion the individual had received sufficient medical care in the detention centre. Her detention term has been extended and she continued to be in very poor and physical health condition. In July 2021, the individual attempted suicide in her cell, but was transferred and hospitalised at a psychiatric clinic, and has been released from detention with support of the Greek Council for Refugees.
32. BVMN asserts that the practice of detaining migrants in conditions which deny them access to fundamental rights including basic medical and psychological care puts trafficking victims at risk of further traumatising, while directly denying them access to forms of support included in the right to remedy.

## VI. Recommendations

33. Given the evidence presented in this report, BVMN respectfully requests that the Special Rapporteur on Trafficking highlight the following issues and recommendations in her report to the 53rd session of the Human Rights Council:

- 1. Victims of trafficking too often remain unidentified. As a result they may be considered irregular migrants and fall victim of restrictive migration policies including pushbacks. It is thus essential to:**
  - a. Carry out vulnerability assessments at points of entry or along migration routes in order to identify potential victims of trafficking or people at risk of being trafficking, with particular attention to children and women.**
  - b. Ensure vulnerability assessments are carried out by appropriate services, and not by law enforcement agencies or immigration authorities and identify and eradicate public sector involvement or complicity in trafficking.**

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<sup>24</sup> Oxfam and the Greek Council for Refugees. 2021. *Detention As the Default: How Greece, with the support of the EU, is generalizing detention of migrants*. Available at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621307/bp-detention-as-default-greece-asylum-161121-en.pdf;jsessionid=459ADC9AB9E8F7E064318DBC87F4FF05?sequence=1> [Accessed 25/02/2023]

<sup>25</sup> Ibid. p.12.

- c. **Ensure trafficked persons are not detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit or destination.**
  - d. **Ensure potential victims of trafficking have access to legal and translation services and are informed of their rights in a language they can understand, particular when engaging with law enforcement or immigration authorities.**
2. **Beyond identification and referral to the appropriate services as well as immediate and short-term assistance, states are required to take robust measures to ensure victims of trafficking are free from threats of violence and exploitation and have access to services to allow for recovery and rehabilitation. This includes implementing the right to remedy for victims of trafficking including:**
- a. **Improving access to physical and psychological care as a form of rehabilitation and recovery, especially given that trafficking exposes victims to an array of health problems,<sup>26</sup> including serious, long-lasting and hard to detect psychological and physical effects.<sup>27</sup>**
  - b. **Guaranteeing non-repetition of trafficking, by addressing the root causes of trafficking by establishing safe and legal migration channels, respecting the principle of non-refoulement and ensuring that migrants, including victims and potential victims of trafficking, have access to regularising their legal status.**

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<sup>26</sup> HRC. 2019. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. HRC 41st session. para. 43.

<sup>27</sup> Jenna Hennebry, Will Grass and Janet Mclaughlin. 2016. *Women Migrant Workers' Journey through the Margins: Labour, Migration and Trafficking*. New York: United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). p. 77.