

PICUM Input

Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers

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PICUM is a network of 167 organisations that has worked for nearly twenty years to advance the rights and improve the situation of people who are undocumented across a variety of areas, including access to health care, access to justice, the rights of undocumented workers, labour migration, the rights of children, families and youth, as well as fundamental rights in the context of immigration detention and return.

We are pleased to contribute to this call on the human rights and fundamental freedoms of African and people of African descent against excessive use of force and other human rights violations by law enforcement.

THE SYSTEMATIC NATURE OF VIOLENCE AGAINST MIGRANTS

The EU's aim to control irregular migration has led to a system of border management with few guarantees of human rights compliance for migrants. Episodes of violence by law enforcement agencies have been extensively documented and denounced by different NGOs, activists and organisations at borders and beyond.

European borders (external and internal) have been operating as spaces of impunity with little control and supervision over law enforcement agencies and its performance, leading to situations of violence, mistreatment and abuse against migrants, asylum seekers and refugees. As one organisation has stated:

Tacitly accepting the trade-off between ensuring human rights compliance and limiting the number of irregular arrivals opens a wide space for multiple forms of abuse. (...) There is an ever-growing need to recognize that human rights violations are taking place at the borders, and particularly at the EU's external (and internal) borders.¹

While the EU directs significant resources and rhetoric towards efforts to “[disrupt the business of models](#)” of smugglers – such as through 3-year [15M € project](#) with the UN Office on Drugs and Crime to “dismantled organized criminal networks” in the Middle East and North Africa – the same UN agency noted in a 2015 [report](#) on preventing violence against migrants that the “violence perpetrated against migrants by border and police officials may pose additional threats”. Indeed, according to a July 2020 [report](#) by the UNHCR and the Danish Refugee Council (DRC), based on 16,000 interviews with migrants and refugees, 47% of the severe abuse many suffered was by law enforcement authorities. This report, alongside the countless reports of various global and regional

¹ Danish Refugee Council (October 2020), [Border monitoring monthly snapshot](#)

human rights bodies, non-governmental organisations and journalists point to the systematic nature of violence against migrants.

In addition to the control of external and internal borders to decrease irregular arrivals or undesired mobility of migrants, part of the migration control system takes place inside European countries (and other countries involved in protecting the European borders through bilateral agreements and the externalisation of borders) through different mechanisms, especially through detention and deportation.

Europe is not the only context where violence against migrants and undocumented people takes place; these communities face experiences of this kind in many different countries because of the prevailing criminalisation of migrants and people of colour.

It should be noted that violence against migrants – particularly those in an irregular situation – should be understood under a broader lens that goes beyond the individual incidents of violence perpetrated by police to encompass broader structural sources of violence. These begin with the growing securitisation of borders and profound criminalisation of certain types of mobility and migration and certain types of migrants. As the UN Special Rapporteur on contemporary forms of racism has written:

In addition to the contemporary manifestations of racial discrimination driven by explicit and implicit ethno-nationalism in the context of citizenship and immigration status, historical legacies remain operational. Especially in former colonial territories, long-standing citizenship and nationality laws often discriminate against indigenous peoples or persons belonging to racial and ethnic minorities, in ways that reinforce ethno-nationalist conceptions of political membership.²

Understanding, and responding to, police violence against migrants requires, then acknowledging these structural dimensions of discrimination and violence. The following are examples of incidents of violence against migrants. This list is far from comprehensive, but instead serves to illustrate the scope and severity of the problem of violence against migrants in Europe. Where possible, the nationality or origin of the people affected is noted.

EXAMPLES OF DOCUMENTED INCIDENTS OF VIOLENCE AGAINST MIGRANTS, INCLUDING AFRICANS AND PEOPLE OF AFRICAN DESCENT

Balkan Route: Violent and illegal pushbacks of refugees and migrants

In September 2020, seven migrants [reportedly](#) sought assistance from an NGO after having been violently pushed back to Serbia by Romanian border guards, one of whom, an amputee, was beaten by a Romanian officer with his own crutches. Organisations from the region report that Romanian border police were increasingly using violence against migrants, with one expert noting: “The kind of brutal behaviour during push-backs by the Romanian police is of the same kind observed first in Hungary, and later in Croatia.”

Since May 2019, the Danish Refugee Council (DRC) has [recorded](#) 21,422 pushbacks ([defined as](#) informal cross-border expulsions to another country, without due process) at the border between Croatia and Bosnia and Herzegovina, and noted a rise in recent months in the number of pushbacks accompanied by violence, torture, confiscation and destruction of personal

² Human Rights Council (2018), [Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](#), para 49.

belongings.³ October 2020 registered the highest recorded number in pushbacks: 1,934 pushbacks, with 84% of people reporting destruction of personal belongings, 64% reporting physical abuse (highest recorded rate) and degrading treatment and two cases of sexual abuse. Just in the period from 12 to 16 October 2020, 52 people needed medical aid, 4 of whom were children. According to the DRC, “[e]pisodes of extreme violence during pushbacks to Bosnia and Herzegovina are not new”. For instance, in May and October 2020, there were reports of people subjected to cruel, inhuman and degrading treatment, including spray-painting of crosses on people’s heads, severe beatings and confiscation of personal property. According to testimony recorded of one of the incidents during this period:

[...] After some time, we were ordered to get up, form a line and put our hands on the shoulders of the man in front. Beatings resumed after we made a line, again, with batons and wooden sticks. During this, a policeman in black asked one of us: ‘Are you gay?’, he told them: ‘No!’. One policeman in black said: ‘Yes, you are’, and he forced wooden stick in his anus. He was moaning and crying, but the police officers didn’t care [...]”.

Additional testimonies have been memorialised in DRC’s [monthly reports](#).

Morocco: violent and discriminatory raids and forced displacements

In the north of Morocco, in 2019, between 11,600 and 12,000 sub-Saharan migrants were [reportedly](#) forcibly displaced to the south of the country with extreme violence, including beatings and theft by Moroccan authorities. The report states that this practice of forced displacement is one of the reasons behind the decrease of arrivals by sea in Spain in 2019 compared to 2018.

According to [Amnesty International](#), thousands of sub-Saharan migrants (including children) were targeted by the Moroccan police in violent and discriminatory raids in the north of Morocco (Tangiers, Nador and Tetuan, on the border with Spain). Particularly violent raids were carried out in migrants’ camps and settlements. In some cases, police set the camps on fire, burned their belongings and stole their mobile phones. Between July and September 2018, an estimated 5,000 people were caught in raids, put on buses and abandoned in remote areas close to the Algerian border or in the south of the country. This was the fate for an estimated 150 sub-Saharan people (including refugees and asylum seekers) who were arbitrarily arrested in Tangiers on 31 August 2018 by the police.

Mediterranean and Libya: Pushbacks at sea, indefinite and arbitrary detention, and unlawful deportations

A 2020 [report](#) by Amnesty International (2020) documents that, since 2016, over 60,000 people (including children) have been intercepted at sea and brought back to Libya by the EU-supported Libyan Coast Guard – 8,435 of them between 1 January and 14 September 2020 alone. When disembarked in Libya in 2020, thousands of refugees and migrants have ended up detained in official Directorate for Combatting Illegal Migration (DCIM) detention centres⁴ under the authority of the Ministry of Interior of the UN-supported Government of National Accord (GNA), where they have been held indefinitely and arbitrarily, in violation of international law. Thousands more have been subjected to enforced disappearances after being transferred to unofficial detention sites under the control of a GNA-affiliated militia. DCIM officials (as well as members of other groups

³ The countries of origin of persons reporting pushbacks vary each month, but are mainly from Middle East and few from Asia and North and Eastern Africa (Morocco, Algeria, Egypt, Eritrea, etc.).

⁴ Migrants from certain countries appeared to be disproportionately subjected to detention in DCIM centres. For example, Eritrean nationals represented 34% of the total number of detainees, while representing less than 14% of those disembarked in 2020 and less than 7% of the estimated number of foreign nationals in Libya.

and militias) systematically subject detainees to inhumane conditions, torture and other ill-treatment, sexual violence and forced labour. Amnesty International and other international organisations have also reported deaths in detention. De facto authorities in eastern Libya forcibly expelled over 5,000 refugees and migrants in 2020 without due process or the opportunity to seek international protection and challenge their deportation.

Belgium: Police violence against undocumented migrants

According to Médecins du Monde (MdM)'s 2019 report, [Violences policières envers les migrants et les réfugiés en transit en Belgique](#), 110 of 440 migrants surveyed between May and July 2018 reported experiencing physical and psychological violence by police (1 in 4), including children.⁵ Violence involved punches, kicks and being struck by clubs, forced and arbitrary strip searches, racketeering, humiliation and blackmail to obtain fingerprints, as well as illegal seizure of personal objects. Most of the cases took place in police stations prior to incarceration.

Fifteen acts of torture (as defined in the [Istanbul Protocol](#)) were reported during fingerprinting by all the people who refused to give them: “punches, kicks and clubs, leaving the person dressed only in a t-shirt or underwear in a cell at very low temperature (fridge house), deprivation of food, drink and sleep, denial of access to sanitary facilities or handcuffing for many hours, forcing the person to remain in a painful position”.⁶ The episodes of violence took place in different regions of Belgium and are not isolated cases. The report highlights the particular case of the park Maximilien and the North Station (in Brussels), two places of settlement of migrants in transit (most of whom are seeking to reach the United Kingdom) where undocumented people were being subjected to systematic raids, harassment, evictions during the night and detention by the police.

Spain: Tarajal massacre

The [Tarajal massacre](#) is one of the major tragedies in the history of migration in Spain. On 6 February 2014, 15 people died by drowning in the Mediterranean sea as a result of the use of anti-riot material (rubber balls, detonator blanks and smoke canisters) and excessive use of violence by the *Guardia Civil* (one of the police bodies deployed in the border) in an attempt to prevent migrants from reaching the Spanish territory.

Sub-Saharan migrants were among a group of 90 people who tried to cross the Moroccan-Spanish border swimming through the Tarajal Beach. Twenty-three people who succeeded were returned to Morocco as they reached the beach without a due process. The testimonies collected by the non-governmental organisation Caminando Fronteras document (with pictures and medical reports) the use of violence by the Spanish police and the injuries caused to the survivors, who didn't receive any assistance.⁷

The case has been taken to court, without any success for the claimants. Although sixteen *Guardia Civil* officers were prosecuted, the case was filed and reopened three times in six years with different arguments and irregularities in the process.⁸ The crime remains un-investigated and justice and reparation have not been granted for the victims and their families. As of February 2020, the families have not been able to identify the bodies of the victims as the Spanish

⁵ Among the nationalities of the 51 migrants that acceded to be interviewed by MdM, most were from the African continent (from largest to smallest number): Ethiopia, Eritrea, Sudan, Egypt, Libya and Morocco.

⁶ Médecins du Monde, 30 October 2018, “[Belgium: Police violence against migrants and refugees in transit](#)”

⁷ Caminando Fronteras (March 2014), [Informe de análisis de hechos y recopilación de testimonios de la tragedia que tuvo lugar el 6 de febrero de 2014 en la zona fronteriza de Ceuta](#)

⁸ Gabriela Sánchez, 31 October 2019, “[Las trabas a la identificación de las víctimas del Tarajal y a la personación de sus familias han permitido el archivo a través de la doctrina Botín](#)”, *eldiario.es*.

government had not provided them with the required visas to go to Ceuta, where some of the victims were buried.⁹

Germany: brutal methods for forced deportations

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) [documented](#) the use of excessive force by the Federal Police in a charter flight to return 46 Afghans on 14 August 2018, directed towards two people “who attempted to forcefully resist their return”. One of the them was restrained by six escorts.

The second complied with the embarkation procedure until the moment when he was seated in the aircraft, at which point he became agitated, starting to shout and hit out in all directions, and attempting to stand up. The two escorts seated on either side of him attempted to keep him seated by holding his arms; they were supported by a back-up team of four escorts, three of whom took up positions behind his seat. One of these escort officers put his arm around the man’s neck from behind and used his other hand to pull his nose upwards thus enabling his colleague to insert a bite protection into his mouth.

The reaction of the person in their custody was to increase his resistance, and a second escort officer from the back-up team intervened, pulling his head down onto an adjacent seat and placing his knee on his head to exert pressure and gain compliance while the man’s hands were tied behind his back with a Velcro strap.

Another escort officer applied pressure with his thumb to the man’s temple. A second Velcro strap was applied below his knees to tie his legs. A helmet was placed on his head, additional Velcro straps were applied to his arms and legs, and force was used to contain him. At this stage, three escorts were holding the man from behind his seat and an escort officer was seated on either side of him. A sixth escort officer knelt on his knees and upper legs, using his weight to keep him seated.

After some 15 minutes, this sixth escort officer gripped the returnee’s genitals with his left hand and repeatedly squeezed them for prolonged periods to gain the returnee’s compliance to calm down. When the aircraft took off ten minutes later, two escorts were still standing upright behind the man’s seat to ensure that he remained seated. Shortly thereafter, he calmed down when told that, if he remained compliant, most means of restraint would be removed. He remained cuffed, with his hands tied behind his back, for about one hour. As he remained calm, he was untied.

In the course of this intervention, the delegation (CPT) observed that, when the first escort officer from the back-up team put his arm around the returnee’s neck, the returnee started struggling to breath and became more agitated as the pressure applied around his throat cut off his breathing momentarily.

France: Violent dispersal of homeless migrants by police

On 17 November 2020, an encampment in the northern Paris suburb of Saint-Denis, across from the Stade de France, was dismantled, leaving hundreds of migrants homeless with no provision of accommodation. Thereafter, hundreds of migrants set up a camp in Place de la République. The evening of 23 November 2020, the police undertook what has been described by the French press as a “[violent evacuation](#)” of the camp in Place de la République. The Minister of the Interior described the images of the sweep, which circulated widely on social media, as “shocking” and demanded a report from the inspectorate general of police. The French Defender of Rights also announced that she will be looking into what occurred.

⁹ Pablo Sainz, 6 February 2020, “[Tarajal: seis años después las familias siguen sin poder identificar a las víctimas](#)”, *El Salto*.

RECOMMENDATIONS

Addressing violence against migrants by law enforcement authorities requires addressing the structural factors that drive it. In this European context, steps in this direction would include:

- **Greater accountability at the EU level for police violence against migrants in member states**, using the legal, political and economic levers at its disposal, and taking a clear position against it. The EU should give the example by ensuring that [any allegation](#) of involvement of the European Border and Coast Guard Agency (Frontex) in human rights violations is dealt with swiftly and transparently. Several major EU human and migrants' rights networks underlined in a joint [statement](#) the need for [human rights monitoring at EU borders](#) that covers all border management operations, that is fully independent and can ensure accountability for violations is strengthened, and suitable consequences follow governments' non-compliance.
- **The EU leading by example by scaling back the machinery of immigration enforcement** that is increasingly built on a [model of surveillance and policing](#), due to the unjustified conflation of migration and security agendas. This should be replaced with sustainable, forward-looking policies based on rights, and evidence rights-based, rather than reactive politics.
- **Improved implementation of the EU's [Victims' Directive](#) that prioritises safety over status.** The EU Victims' Directive requires that any person who has been victimised within the EU can access, without discrimination on any ground including residence status, support, services and justice for the crime they have suffered. Full implementation of the Directive in a way that benefits undocumented people requires ensuring they have full and unconditional access to services and protection when they are victimised, and are protected from deportation when they come forward to report or to receive help by "firewalls" that restrict the enforcement of immigration rules against them. The European Commission, in its recent [Victims' Right Strategy](#), has committed to focusing on safe reporting for undocumented victims, through exchange of good practices and potentially new legislation.
- **Prioritising a shift from immigration detention to alternatives to detention, by first ensuring that children and people with vulnerabilities are not put in immigration detention**, recognising that people in detention are at risk of violence (25% of prisoners are [subjected](#) to violence each year) and procedural safeguards are more difficult to enforce in these settings. This strategy would be in line with the [commitments](#) that signatories ([including 18 EU member states](#)) of the UN Global Compact on Safe, Orderly and Regular Migration have made to work towards ending the immigration detention of children and to prioritize non-custodial alternatives to detention, which have been [evaluated favourably](#) within the European context.

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