

## **The Danish Refugee Council's Submission to the Special Rapporteur's Report on Pushback Practices and Their Impact on the Human Rights of Migrants**

The Danish Refugee Council (DRC) welcomes the opportunity to provide input, to the upcoming report to the 47th session of the Human Rights Council issued by the Special Rapporteur on the human rights of migrants, on the human rights dimensions of pushbacks practices at international borders. The DRC assists refugees and internally displaced persons in 40 countries across the globe: we provide emergency aid, fight for their rights, and strengthen their opportunity for a brighter future. We work in conflict-affected areas, along the displacement routes, and in the countries where refugees settle. Providing direct assistance to people on the move and having direct contact with them throughout their journey, makes DRC a well-placed actor to speak out against the rights violations that migrants, refugees and asylum-seekers face when crossing borders or moving onwards.

Because of the limited length of submissions, DRC's submission will focus on:

- Data collected on pushbacks and limitations to the right to claim and seek international protection, both at the Croatian and Italian border<sup>1</sup>;
- Chain pushbacks happening from Italy or Austria to Bosnia;
- The impact of COVID-19 with regards to border crossings is provided; and
- Recommendations to end violent pushbacks.

### **Border: Croatia and Bosnia-and-Herzegovina (BiH)**

DRC has been documenting the systematic pushbacks and border violence by Croatian border guards since May 2019. The monitoring of the border violence is part of our humanitarian programming. DRC produces monthly border violence snapshots that highlight the number of pushbacks, rights that are reportedly violated, locations where the pushbacks take place, testimonies and other infographics. Some key highlights:

- Since May 2019 (until November 2020)<sup>2</sup>, DRC has recorded 22.500 pushbacks to BiH. The monthly number of pushback cases recorded has been on average around 1600-1700, with some exceptions. In January 2020 the number was only 754, due to the harsh winter conditions that limited options for onwards movement, and in March 2020 the number was only 396, the start of the pandemic prevented all movements. Further, in October 2020, the monthly number peaked with 1934 registered push backs as well as cases of extreme violence.
- Many of the people that report pushbacks also report violations of their rights. In November 2020, 80% of the people reported theft, extortion or destruction of property, 59% physical abuse or assault, 57% abusive or degrading treatment, 22% arbitrary arrest or detention and 8% denial of access to asylum procedures.

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<sup>1</sup> Please note that a separate submission on pushbacks at the Greek borders was submitted by DRC Greece.

<sup>2</sup> DRC's monthly updates from December 2020 and January 2021 are in the process of being produced and will be shared with the SR upon publication.

- People are pushed back, irrespective of how they travel, or their country of origin. Again for November 2020, as an example, 6% of the reports were collected from adult women, 9,5% from children (both boys and girls) travelling with their family members while 2% were unaccompanied or separated children and just over 84% were adult males. People came from a variety of countries, including: Pakistan, Afghanistan, Bangladesh, Iran, Turkey, Eritrea and others. Further, people have been pushed back to BiH, even though they had never been to BiH before.

The patterns of violence are systematic, and while there are different degrees of violence, none of it is acceptable under international law. We cannot, and should not ever, become used to violence being used at borders to keep people out. All DRC monthly monitoring reports, which we consider part of this submission, can be found on this link: <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>.

## Border Italy and France

French police routinely stops and returns asylum seekers at the borders of Ventimiglia and Oulx (Italy), without giving them the opportunity to apply for asylum, even in the case of unaccompanied minors. The situation at such border points remains critical. Hundreds of people in each of these locations are sleeping rough, in full winter. No camps are present in any of these locations, the humanitarian response is fragmented and heavily relies on donations from the local population. Families with small children and UASC are present in all locations.

More information about the pushbacks, which has been a consistent practice for multiple years, can be found in the reports and articles by Anafé<sup>3</sup>, MSF<sup>4</sup>, Medu<sup>5</sup>, the Rosa Luxemburg Foundation<sup>6</sup> and Oxfam<sup>7</sup>.

## Border: Italy and Slovenia

Up to this moment, Italian authorities have routinely pushed back arrivals from Slovenia, without any administrative procedure in place, due to a so-called bilateral agreement with Slovenia that allows “returns” to happen 10 km from the border (the same agreement has recently been challenged by the *Tribunale of Rome*, see below). So far, Italian authorities have refused to concede that pushbacks to Slovenia should not happen and have confirmed their trust in Slovenia and Croatia in implementing human rights regulations.<sup>8</sup>

## Chain pushbacks

Migrants, asylum-seekers and refugees have increasingly reported being intercepted in Italy (or Austria) and to then being transported, without access to an asylum or formal procedure, through Slovenia and Croatia to BiH, some without even having been in BiH before. In November 2020, 102 persons reported experiencing chain pushbacks from Italy and one person all the way from Austria. Asylum-seekers, refugees and migrants have reported that they were held outside official police centres or detention facilities, without a documented paper trail, and/or receiving treatment that is far from dignified. These chain-pushbacks are an informal cooperation

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<sup>3</sup> [http://www.anafe.org/IMG/pdf/anafe - frontieres francaises 30 ans d enfermement et de violations des droits - actes du colloque du 28 fevrier 2020.pdf](http://www.anafe.org/IMG/pdf/anafe_-_frontieres_francaises_30_ans_d_enfermement_et_de_violations_des_droits_-_actes_du_colloque_du_28_fevrier_2020.pdf)

<sup>4</sup> <https://www.medicisenzafrontiere.it/news-e-storie/news/frontiere-nord-italia/>

<sup>5</sup> <https://mediciperidirittiumani.org/medu/wp-content/uploads/2020/11/LEGGI-IL-RAPPORTO-COMPLETO.pdf>

<sup>6</sup> <https://www.rosalux.eu/en/article/1653.the-brutal-side-of-the-french-riviera.html>

<sup>7</sup> [https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file\\_attachments/bp-nowhere-but-out-refugees-migrants-ventimiglia-150618-en.pdf](https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp-nowhere-but-out-refugees-migrants-ventimiglia-150618-en.pdf)

<sup>8</sup> [https://www.redattoresociale.it/article/notiziario/rotta\\_balcanica\\_lamorgese\\_riammissioni\\_dall\\_italia\\_tutelano\\_i\\_piu\\_vulnerabili](https://www.redattoresociale.it/article/notiziario/rotta_balcanica_lamorgese_riammissioni_dall_italia_tutelano_i_piu_vulnerabili)

between EU Member States to facilitate expulsions across borders. The chain-pushbacks through different EU MS are occurring entirely outside formally established mechanisms and aim to circumvent the obligations of EU MS under European and international human rights law as well as the EU's asylum and migration *acquis*.

Further, the phenomena of chain pushbacks has also been recognised in court rulings. The Tribunal of Rome has found, on 18 January 2021, that the Italian border police has violated the rights of a Pakistan man pushed back from Trieste back to Bosnia in the summer 2020. The man ended up living in the streets in Sarajevo. The Tribunal of Rome (Section of the rights of the person and immigration rights) has declared that the "informal readmissions" carried out on the basis of a 1996 bilateral agreement<sup>9</sup> between Italy and Slovenia violate the Italian Constitution, the European Convention of Human Rights, the Charter of Fundamental Rights of the EU, among others. This not only applies to asylum seekers, but to all people reaching the border with Italy. The provision is open to all as the readmissions have been happening without any administrative procedure, no information, no written proof, violating the personal rights of people on the move in multiple ways (right to appeal, right to defense, deprivation of personal freedom...), not only for the opportunity to claim for asylum. In addition, a Slovenian Administrative Court found on 16 July 2020 that the Republic of Slovenia violated the applicant's right to asylum (Article 18 of the EU Charter of Fundamental Rights), the prohibition of collective expulsions (Article 19 § 1) and the principle of non-refoulement (Article 19 § 2). It dealt with a chain push back from Slovenia to BiH. The case establishes both that the applicant was subject to gross violations, and that these are systematic practices affecting thousands of asylum seekers every year in Slovenia and Croatia.

### COVID-19 and the impact of rights during border crossings

COVID-19 has significantly limited movement around the world but the fear of the virus to spread has been used disproportionately to limit migrants' freedom of movement. Migrants and refugees were often deprived from correct information about the pandemic. They were further perceived by governments as the 'spreader' of the virus, which has led to increased cases of xenophobia, hate speech and racism

In BiH, migratory flows into the country have plunged in April and May 2020, only to start steadily rising again from July onwards. Compared to previous two years, the number of arrivals significantly reduced. The implications of COVID-19 in the country were reflected in the suspension of registration of intentions to seek asylum in the country, as well as of the asylum claims. Furthermore, restriction of movement for all PoCs in the reception facilities was introduced by the decision of the Council of Ministers of BiH.

In Italy, new arrivals have been critically impacted by the pandemic. The police headquarters, the Prefectures (territorial representation offices of the Interior Minister) and the Territorial Commissions for decisions on asylum claims have been closed or open for limited working hours in 2020. When open, the access was limited to a small number of people per day. For these reasons, the applications for asylum have been delayed. Challenges have also been connected to the absence of any clear institutional information and communication regarding the legal status of migrants, refugees and vulnerable people during the COVID-19 lockdown phase. Most of the changes to the asylum application were described in the so-called "Decreto Cura Italia" (Decree Law no. 19 of 25 March 2020) which had significant effects on the regular presence of foreign citizens in Italy (extensions of residence permits, closure of Immigration Offices and Territorial Commissions, suspension of hearings in the Asylum Courts) and which also provided for new income support measures (expense vouchers, emergency income, etc.) but that was seldom fully understood by asylum seekers due to lack of ad-hoc outreach and dissemination plans. In addition, the quarantine measures and the increase of

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<sup>9</sup> The original legislation: [https://www.asgi.it/wp-content/uploads/2021/01/Tribunale-Roma\\_RG-564202020.pdf](https://www.asgi.it/wp-content/uploads/2021/01/Tribunale-Roma_RG-564202020.pdf)

controls along the main communication routes in Italian northern regions has substantially limited migrants' flow between Italy and France, causing an increase in the number of people transiting through urban areas without any possibility of finding shelter or appropriate housing solutions. Also, detention of new arrivals at the borders has increased.<sup>10</sup>

The right to health is universal and should be respected at all times; excluding migrants, asylum seekers and refugees from access to health – or a vaccine – would further exacerbate existing vulnerabilities and be a violation of their access to rights and services. It is important that access to vaccination should not become a measure of de facto immigration control, where vaccination status can be misused to prevent refugees and migrants from moving. It is besides also in the interest of public health to have a clear boundary between vaccination delivery and immigration authorities, so that refugees and migrants can access vaccination schemes, regardless of legal status, which is in line with the Global Compact on Safe and Orderly Migration.

### **Recommendations**

Pushbacks continue being systematically used as a tool of border management, they are – irrespective of whether they include violence – illegal and must end. Controlling migration is not, and can never be, an excuse to ignore, violate or circumvent established legal frameworks – or set aside human rights. Irrespective of migratory status people have human rights and those need to be upheld. The main issue within the European Union and at its borders is not the lack of legal frameworks, it is the lack of effectively implementing them and holding those that don't accountable.

Despite thousands of reports collected by humanitarian workers and grass-roots organizations, despite horrifying episodes of violence recorded, despite the growing number of legal claims submitted, authorities in many different countries, including in Croatia, Greece and Italy, continue to deny that pushbacks are happening. An independent effective border monitoring mechanism is required. The European Commission's proposal on this, as part of the pre-entry screening regulation in the new Eu Migration and Asylum pact, risks not being effective to end violations<sup>11</sup>, as each mechanism should:

- Have a scope that applies to all alleged fundamental rights violations by national border management authorities or during border control activities.
- Be independent of national authorities, and rely on national human rights institutions and/or civil society organisations, which are supported with independent funding.
- Effectively investigate allegations to put an end to abuse, guarantee access to justice and ensure transparency.
- Include enforceable consequences if governments fail to cooperate with an independent and effective mechanism, do not set it up or ignore its findings.

It is also recommendable that the Special Rapporteur, as well as different reporting mechanisms and bodies within the UN system periodically report on pushbacks, aiming to hold the perpetrators accountable. Further, more innovative technologies, such as body cameras for border law enforcement personnel, should be considered and promoted.

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<sup>10</sup> CLID report, migrant detention in Covid-19 times (4 August 2020), <https://cild.eu/en/2020/08/04/migrant-detention-in-covid-19-times/>

<sup>11</sup> This document outlines recommendations with regards to the Commission's proposal, it is a joint statement of DRC and 7 other humanitarian and human rights NGOs. <https://drc.ngo/about-us/for-the-media/press-releases/2020/11/new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>