

Input for the Subcommittee on Prevention of Torture Draft General Comment on
Article 4 of the Optional Protocol to the Convention Against Torture

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 voluntary field experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

II. Summary of feedback and recommendations:

2. The Border Violence Monitoring Network has documented the mass proliferation of torture and abuse of refugees and migrants deprived of their liberty in both situations of detention, or during situations of apprehension, transfer and forced removal across international borders. We affirm that the systematic and habitual patterns of torture of refugees and migrants have been further compounded by the degradation of the right of access for both domestic, regional, and international torture prevention mechanisms to monitor the deprivation of liberty in the context of border control activities and the detention of refugees and migrants.

3. Therefore, due to the continued need to strengthen and implement effective measures to prevent acts of torture and cruel, inhuman, or degrading treatment or punishment in line with the Optional Protocol, BVMN recommends the following amendments to the General Comment:

3.1: Due to the systematic use of secret or improvised detention spaces to detain and torture refugees and migrants, BVMN recommends that all references to the access to detention must also include, inter alia, explicit reference to the right to access to secret or improvised detention spaces under Article 4 of the Optional Protocol.

3.2. Furthermore, due to the mass proliferation of inhuman and often torturous pushbacks across international borders, BVMN recommends further clarification be added to the General Comment outlining the right to access and monitor persons deprived of liberty during apprehension, transfer and forced removal under Article 4 of the Optional Protocol.

3.3. Lastly, considering evidence of detained refugees and migrants being subjected to torture en masse at border regions by virtue of an order given by State parties, or with its consent or acquiescence, we recommend the Committee further provide reference to the right to access international zones, transit zones and green borders under Article 4 of the Optional Protocol.

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

III. Access to secret or improvised detention under Article 4 of the Optional Protocol

4. BVMN recognises how the continued and increasing use of secret or improvised detention of refugees and migrants, including during illegal pushbacks², pose a unique challenge for establishing an effective mechanism of torture prevention and a system of regular visits.

5. Reflecting the importance of assessing and monitoring secret or improvised detention spaces, an investigation carried out by BVMN in 2021 found that of the 69 pushback testimonies recalling the detention of refugees in Greece, at least 20.2% demonstrate detention that we affirm would amount to secret or incommunicado detention. Testimonies collected across the Western Balkans, Greece and Türkiye further demonstrate the proliferation of secret or improvised detention as a tool to facilitate the mass torture, abuse, or pushback of refugees and migrants.

5.1. In 2020,³ BVMN member Mobile Info Team 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. The detained group reported being transported from the secret detention site to the Evros River, where they were pushed back to Türkiye.

5.2. In 2021,⁴ BVMN member Josoor documented a testimony that recalled a detention site in Greece with “no sign to show that it was an official police station or detention site [...] it looked like an abandoned house. Further describing the detention, the respondent recalled ‘there were about six minors, who were under 17 years old, maybe 14 or 15. And they brought one more woman in our cell when I was there’”.

5.3. In 2022, BVMN documented a testimony on the detention of a group of three migrants near the Bulgarian-Turkish border.⁵ According to the respondent, their group was intercepted by two uniformed men and transported to a detention site described as “an army base”. The respondent and their group were placed and detained inside a toilet which was used as a form of cell with 10 other migrants.

² ‘Pushback’ is a common term to denote the action of State representatives forcibly and in most cases collectively returning individuals seeking protection to another country in an irregular/informal manner and subsequently preventing or restricting them access to protection mechanisms.

³ BVMN. 2020. ‘Pushback from Lagadikia Camp.’ Available at: <https://www.borderviolence.eu/violence-reports/september-16-2020-0000-lagadikia-greece/>

⁴ BVMN. 2021. ‘They kept saying to us “Arab dog”. You can’t imagine how much hatred was there. It felt like it was a retaliation.’ Available at: <https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>

⁵ BVMN. 2022. “He shoot one next to me very near me and then he was like holding the gun on me so if I moved he probably shoot me...” Available at: <https://www.borderviolence.eu/violence-reports/october-26-2022-0030-near-road-e87-bulgaria/>

6. Further to the evidence and testimonies collected by members of the Border Violence Monitoring Network, multiple external organisations or bodies have also affirmed the widespread use of secret or improvised detention:

6.1. In 2019, the Croatian NPM reported on a ‘garage’ at one of the border police stations where irregular migrants were allegedly held without food, water or a toilet, had to sleep on the concrete floor and were prevented from seeking international protection, and cases where irregular migrants were held in a “basement room” at a police station, where they had no access to a toilet, water or food, and that their right to seek asylum had been denied⁶.

6.2. In 2021, the New York Times⁷ released an investigation into how the Greek Government is detaining migrants incommunicado at secret extrajudicial locations before expelling them to Türkiye without due process.

6.3. In 2022, Lighthouse Reports published a report on the use of secret facilities or “black sites” as informal detention systems in Bulgaria, Hungary and Croatia prior to the illegal deportation of people seeking refuge or asylum.⁸ The report has collected visual evidence of refugees being detained and “routinely locked” in “[small] derelict, cage-like structure” resembling a “disused dog kennel, with bars on one side” for several hours to up to three days”

6.4. The 32nd General Report of the CPT explained the modus operandi of pushback operations included detention in informal places such as disused police stations, abandoned buildings, garages, containers or tents.

7. Due to the evidence of the continued and systematic use of secret or improvised detention spaces to detain and torture refugees and migrants, BVMN recommends the Committee consider adding explicit reference to secret or improvised detention within paragraph 29 of the General Comment:

Paragraph 29: Article 4 refers to any place where persons are or may be deprived of their liberty. This is not limited to the traditional understanding of places of deprivation of liberty, but should be understood comprehensively, in accordance with the scope and purpose of the Optional Protocol, to mean any place, facility or setting in which individuals

⁶ Republic of Croatia Ombudsman. 2019. “Report of the Performance of the Activities of the National Preventative Mechanism for 2019”. Available at: <https://atlas-of-torture.org/en/entity/ydm8zrz6aef?searchTerm=basement&page=31>

⁷ NY Times. 2020. ‘We Are Like Animals’: Inside Greece’s Secret Site for Migrants.’ Available at: <https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html>

⁸ Lighthouse Reports. (2022). “Europe’s Black Sites”, Available at: <https://www.lighthousereports.nl/investigation/europes-black-sites/>

already are or potentially may be deprived of their liberty, **including in secret or improvised detention settings**. The Subcommittee has been clear in its visit that the Optional Protocol requires States parties to guarantee national preventive mechanisms access to all the facilities necessary so that they can carry out visits to any place where persons are, or in its opinion may be, deprived of their liberty. It is critical that States parties guarantee both the Subcommittee and national preventive mechanisms full access to places, facilities or settings in which individuals currently are, previously were or potentially may be deprived of their liberty **including through unannounced visits**. The length of time of the deprivation of liberty is irrelevant for the determination of such a place.

IV. Access to locations of apprehension, transfer, and removal in the context of border control under Article 4 of the Optional Protocol

8. BVMN recognises how pushbacks carried out across Europe and its border regions, in which refugees and migrants are arbitrarily apprehended, transferred, and forcibly and illegally removed across international borders without due process or ability to access asylum proceedings provides a significant challenge for national and international torture prevention mechanisms.

9. Testimonies collected by BVMN show not only the increasing frequency of the apprehension, transfer and forced removal of refugees and migrants during pushbacks (*between 2017 - 2022, BVMN documented an estimated 29,000 pushback victims through collecting 1,680 pushback testimonies*), but also the continued violence (*89% of pushbacks including violence that we assessed as reaching the threshold for torture or inhuman treatment.*) Each stage of the pushback process, including the process of apprehension, transfer and forced removal should be viewed as a form of deprivation of liberty that places victims at a significant risk of torture.

9.1. During pushbacks refugees and migrants deprived of their liberty are routinely subjected to violence that we assert amounts to torture; including by being beaten whilst handcuffed⁹, attacked by police dogs¹⁰, and tied to metal fences and then pepper sprayed¹¹.

9.2. When transferred as part of a pushback, refugees and migrants are again at grave risk of being subjected to torture and inhuman treatment. A 2020 investigation conducted by BVMN into torture practices in Croatia showed that in up to 41% of pushback, persons

⁹ BVMN. 2022. "They told him, 'If you come back, we will beat you again, so you have to go now'. Available at: <https://borderviolence.eu/testimonies/march-25-2022-0000-41-128306-22-517528/>

¹⁰ BVMN. 2020. Available at: "chain-pushback from Slovenia to Bosnia, including a severe dog attack" <https://borderviolence.eu/testimonies/may-1-2020-1730-ten-kilometers-away-from-the-italian-border-near-the-a1-highway-slovenia/>

¹¹ BVMN. 2022. Available at: "I told one of them that I was very thirsty but he kicked me in the face shouting that there was no water" <https://borderviolence.eu/testimonies/october-28-2022-1700-in-the-proximity-of-subotica/>

were subjected to inhuman treatment inside a police vehicle, including purposeful overcrowding and the manipulation of temperature within the vehicle.

9.3. There is also a significant risk for refugees and migrants when being forcibly removed across international borders during pushbacks. BVMN collected evidence of police routinely forcibly undressing persons and pushing them back across international borders in a complete state of undress. In Greece, evidence highlights how people have gone missing and are suspected dead due to being pushed back across the Evros River and being swept away.

10. Evidence of the systematic use of illegal pushbacks and abuse during apprehension, transfer and removal has also been affirmed by multiple external organisations and monitoring bodies:

10.1. In 2022, the CPT published its General Report in which it established clear patterns of physical ill-treatment against foreign nationals who have been apprehended and pushed back across Council of Europe member states' borders. The CPT recognized that during interception and apprehension, foreign nationals are sometimes subjected to prolonged, informal detention in inadequate conditions prior to being pushed back.

10.2. In 2019, the CAT concluding observation on Greece noted it was "seriously concerned at consistent reports" of the breach of the principles of non-refoulement and the repeated allegations of summary forced returns of persons apprehended at sea and at land borders with Türkiye without prior risk assessment, whilst also noting previous investigations into these patterns of rights violations carried out by the Greek NPM.

10.3. In 2018, the UN Special Rapporteur on Torture published their report to the Human Rights Council, stating that the "pushbacks", or the illegal apprehension, transfer and removal of third country nationals 'often involve short-term periods of custody, during which migrants find themselves under the physical control of border guards and are being subjected to torture or ill-treatment with the intent of achieving a deterrent effect through punishment, intimidation, coercion or discrimination.

10.4. In 2017, the CAT concluding observations on Bulgaria outlined that the State party should Prevent the ill-treatment of asylum seekers by law enforcement officers by 'refrain from engaging in pushbacks and refoulement and set up accessible and protection-sensitive entry systems at border crossing points.

11. Whilst international, regional, and national torture preventative mechanisms have all reported on the continued and systematic use of violence during pushbacks and during the apprehension,

transfer and illegal removal of refugees and migrants BVMN recognises the continued restriction or prevention placed upon NPMs to investigate this under the optional protocol:

11.1. In the 2019 annual report by the Croatian NPM, it affirmed that since June 2018, the Ministry of Interior has denied direct access to cases and data on the treatment of irregular migrants. Thus, as for instance during NPM visits to border police stations, the NPM denied access to cases. The NPM further stated that by arbitrarily and unevenly interpreting the legal framework regulating the mandate of the Ombudswoman and the NPM, police officers overstep their authority and make it impossible to efficiently fulfil the functions of the NPM and examine the treatment of irregular migrants.

12. BVMN affirm that the continued and substantial evidence of mass human rights abuses taking place during the apprehension, transfer and forced removal of refugees and migrants, shows why, especially in the context of migration and border control measures, the Subcommittee and NPMs must be provided unrestricted access to monitor such locations.

13. Considering the aforementioned evidence, BVMN recommends the Committee take steps to further support NPMs in their monitoring activity by further clarifying under the General Comment the right to access and monitor locations of apprehension, transfer and forced removal, especially in situations where persons are deprived of their liberty during border control measures. We affirm NPMs should be able to make these visits unannounced.

V. Access to international zones, transit zones and green borders under Article 4 of the Optional Protocol

14. BVMN recognises how border areas such as international zones, transit zones and green borders have increasingly become situations of risk for asylum seekers, refugees and migrants whereby they, in the context of State-sanctioned border and migration control measures, are systematically subjected to grave rights violations including torture and inhuman treatment.

15. As previously affirmed, human rights monitoring organisations including BVMN have long documented the systematic use of torture during illegal pushbacks, whereby third country nationals are illegally forced across international borders, sometimes in states of undress or after being subjected to electric discharge weapons, dog attacks, punitive sexual assaults or violence with police batons or improvised weapons such as tree branches.

15.1. In November 2020, BVMN member organisation documented a testimony recalling how a group of six people were beaten, stripped naked and chased by police with batons, pushing the group across the green border near Vrgorac¹²

15.2. In January 2021,¹³ BVMN collected testimony from a respondent who was detained by the Greek authorities and pushed back with around 40-50 other people. The respondent reports that after being detained for 2 days, the group was transported to the Evros River but they did not have any boats to cross in. The respondent reports that the Greek authorities “*forced us and threatened us with guns to cross the river.*” The respondent further reported that “*one of us sank in the river. He died. We couldn’t find him later*”.

16. Torture prevention mechanisms, including the Croatian ombudsperson and the CPT have also affirmed how refugees, migrants and asylum seekers deprived of their liberty at international zones, transit zones and green borders are being subjected to violence.

16.1. Both the 2018 and 2019 annual report of the Croatian NPM outlined the practice of the illegal refoulement and pushbacks of migrants, refugees and asylum seekers by Croatian police across the Green Border to Serbia.

16.2. Furthermore, the CPTs analysis of CCTV footage and photographs of green border areas established the use of excessive force by law enforcements against foreign nationals and their summary removal [pushback] across border fences.

17. Whilst it has been long established that international zones, transit zones and green borders, are locations under the jurisdiction or control of the State party and have been used to deprive refugees, migrants and asylum seekers of their liberty and subject them to torture at acquiescence of the State, BVMN recognises how States have increasingly degraded opportunities for visiting persons deprived of their liberty:

17.1. For instance, Türkiye does not consider holding people in transit zones (such as airports) as a form of detention. However, in law, persons can only be held for up to 48 hours in transit zones before being transferred to a Removal Centre. According to the Asylum Information Database, it is widely reported that applicants for international protection are detained on holding facilities at the airport. In 2021 there were concerns that persons were being detained for longer periods in holding facilities at airports.¹⁴

¹² BVMN. 2020. “CROATIANS DON'T LIKE GAYS' - pushback of LGBTQ+ asylum seekers.” Available at: <https://borderviolence.eu/testimonies/november-4-2020-1900-green-border-near-vrgorac/>

¹³ BVMN. 2021. ‘One of us sank in the river. He died. We couldn’t find him later.’ Available at: <https://www.borderviolence.eu/violence-reports/january-3-2021-0200-dilofos-kapikule/>

¹⁴ AIDA: Asylum Information Database, *Country Report: Türkiye: 2021 Update* (2022) https://asylumineurope.org/wp-content/uploads/2022/07/AIDA-TR_2021update.pdf

18. Reflecting the importance of accessing international zones, transit zones and green borders, including accessing these locations unannounced, BVMN affirms previous statements issued by the CPT that “professional independent oversight and monitoring is essential when border control activities take place in remote or out-of-sight locations such as the high seas or the green border.”

19. As such, BVMN recommends the Committee consider further clarifying the right to access international zones, transit zones and green borders under Article 4 of the Optional Protocol.