

Greece's Compliance with the International Convention for the Protection of All  
Persons from Enforced Disappearance

Report for the 22<sup>nd</sup> Session of the Committee on Enforced Disappearances

Submitted by:  
Border Violence Monitoring Network

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## **I. Reporting Organisation**

1. Border Violence Monitoring Network<sup>1</sup> (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 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 field experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

## **II. Executive Summary**

2. Despite the ratification of the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) and its subsequent integration into Greek domestic law, we assert that Greece has failed to meet its obligations under the ICPPED.

3. We affirm that the continuous action of pushbacks and the refoulement of refugees and migrants, carried out by Greek authorities is illegal and in contradiction to the obligations set out under the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), more specifically articles 12, 16, 17, 21, 22, (23), and (24) ICPPED. Furthermore, the failure to identify and hold those state actors responsible for these (enforced) disappearances contradicts the overarching principle of the ICPPED namely, as stated in its preamble, "to combat impunity for the crime of enforced disappearance."

4. We maintain that the continued and credible allegations published by a range of NGOs and international monitoring bodies would meet any threshold to sustain the claim that Turkey is not a safe country for expulsion, return, surrender or extradition. Therefore, all actions of pushbacks, collective expulsions or any other forms of return carried out by Greece to Turkey would be in violation of the International Convention for the Protection of All Persons from Enforced Disappearance, specifically Article 16 (1) and 16 (2).

5. We assert that the continued and credible allegations of the use of incommunicado or secret detention during the pushback and refoulement of migrants and refugees is a further breach of the ICPPED. Collected evidence, particularly documented breaches of articles 17 (2) (c) and (d), (3) and 21.

6. Furthermore, the continued intimidation and persecution of NGOs and civil society organisations working to document or support victims and document pushbacks and

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

enforced disappearances may amount to a violation of article 12, 18 or 24 (7) in specific cases.

7. Lastly, we assert that the Greek State has failed its obligation to implement an independent and impartial investigation into serious violations of the provisions of the convention, including measures contributing to enforced disappearances such as pushbacks, incommunicado and secret detention and the intimidation and persecution of NGOs, which may amount to a violation of articles 12 and 24.

### **III. Pushbacks, Enforced Disappearance and Refoulement as a Measure that Contributes to Enforced Disappearance**

Article 12: International Convention for the Protection of All Persons from Enforced Disappearance.

Article 16-17: International Convention for the Protection of All Persons from Enforced Disappearance.

Article 21-24: International Convention for the Protection of All Persons from Enforced Disappearance.

#### **Explanatory Note:**

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

9. We assert that the continuous action of pushbacks and the refoulement of refugees and migrants, carried out by Greek authorities is illegal and in contradiction to the obligations set out in the ICPPED, more specifically articles 12, 16, 17, 21, 22 ICPPED.

10. Furthermore, we conclude due to the continued documentation of enforced disappearances, chain refoulement to Syria, and other grave human rights violations<sup>2</sup>, pushbacks, expulsions or deportations to Turkey may constitute a violation of the non-refoulement principle, which is customary law, and enshrined in Article 16 of the ICPPED, as already noted by United Nations Special Procedures on various occasions.<sup>3</sup> We recall that States may not expel or extradite a person to another country where he or she would be at risk of enforced disappearance.<sup>4</sup>

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<sup>2</sup> See: AL TUR 5/2020

<sup>3</sup> See: A/HRC/36/39/Add.2, para. 33; A/HRC/33/51/Add.1, para. 55; A/HRC/24/46, paras. 67-74.

<sup>4</sup> See: ICPPED art. 16(1). See also: Human Rights Committee, general comment No. 31, para. 12.

## Evidence of Pushbacks within Greece:

11. The Border Violence Monitoring Network has consistently documented the widespread and habitual use of pushbacks of which we assert is a measure carried out by the Greek State, which contributes to the risk of enforced disappearance. To date, BVMN and its partners have collected 171 individual pushbacks testimonies from Greek territory detailing the ill-treatment, abuse and torture of more than 11,093 people.

11.1. From July 2019 to the end of 2019, BVMN collected 6 pushback testimonies from Greece, exposing the ill-treatment and abuse of an estimated 74 people<sup>5</sup>.

11.2. In 2020, BVMN collected 88 pushback testimonies from Greece, exposing the ill-treatment and abuse of an estimated 4,711 people.<sup>6</sup>

11.3. In 2021, BVMN collected 77 pushback testimonies from Greece, exposing the ill-treatment and abuse of an estimated 6,251 people.<sup>7</sup>

12. In addition to BVMN's work, a range of other NGOs and human rights watchdogs have also reported on pushbacks from Greece:

12.1. In June 2021, Amnesty International defined pushbacks and violence against refugees and migrants on the Greek border as a “*de facto* border policy”.<sup>8</sup> In their report on the matter, they went on to say, “in most cases, the acts of violence reported violated the international prohibition of inhuman or degrading treatment. Some incidents also amounted to torture, due to their severity and humiliating or punitive intent”. In the same year, the Protecting Rights at Borders Initiative collected testimonies documenting pushbacks of 34 people between 16 April and 30 June 2021.<sup>9</sup> The documented pushbacks include arbitrary arrest, inhumane detention, and violence. These testimonies also included a man with refugee status in Greece who was apprehended prior to a meeting with a lawyer to re-issue his documentation as he had lost his original. Despite paperwork showing his legal status, he was expelled to Turkey.

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<sup>5</sup> BVMN. n.d. Reports Archive. Available at: <https://www.borderviolence.eu/violence-reports/>

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> Amnesty International. 2021. Greece: Pushbacks and violence against refugees and migrants are de facto border policy. [Online]. Available at: <https://www.amnesty.org/en/latest/news/2021/06/greece-pushbacks-and-violence-against-refugees-and-migrants-are-de-facto-border-policy/>

<sup>9</sup> Protecting Rights at Borders. 2021. Doors wide shut: Rights violations at borders re-confirmed, while the door for justice and the path to accountability remain closed. [Online]. Available at: <https://www.drc.ngo/media/y2zphgpz/prab-report-april-to-june-2021.pdf>

12.2. Likewise, in 2020, Human Rights Watch urged “the Greek parliament to establish an inquiry into all allegations of collective expulsions, including pushbacks, and violence at the borders, and determine whether they amount to a de facto government policy”.<sup>10</sup>

12.3. In 2019, the United Nations Working Group on Arbitrary Detention reported on the continued allegations of pushbacks and stated: “The Working Group urges the [Greek] Government to put an immediate end to pushbacks and to ensure that such practises, including any possible acts of violence or ill-treatment that have occurred during such incidents, are promptly and fully investigated”.<sup>11</sup>

13. Recalling the indiscriminate nature of pushbacks from Greece, BVMN is additionally concerned with the high level of children or minors present during pushbacks.

13.1. From July 2019 to the end of 2019, BVMN identified that 33% of the 6 testimonies collected recalled that they were pushed back in a group that contained one or more children.<sup>12</sup>

13.2. In 2020, BVMN identified that 69% of the 88 pushback testimonies collected recalled that they were pushed back in a group that contained one or more children.

13.3. In 2021, BVMN identified that 86% of the 76 pushback testimonies collected recalled that they were pushed back in a group that contained one or more children.

### **Pushbacks and Enforced Disappearance of Turkish Nationals from Greece**

14. Since 2015, there has been an increase of people seeking international protection in Greece from Turkey, including ethnic Kurds, socialist activists/politicians and alleged members of the Gülen movement, considered a clandestine terrorist organization by Turkish authorities, all of whom are often fleeing persecution, imprisonment and death.<sup>13</sup>

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<sup>10</sup> Human Rights Watch. 2020. Greece: Investigate Pushbacks, Collective Expulsions. Available at: <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>

<sup>11</sup> OHCHR. 2019. Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2-13 December 2019). Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25421&LangID=E>

<sup>12</sup> For more data and access to BVMN’s open source testimony database go to: BVMN Website. Export Testimonies From Database. Available at: <https://www.borderviolence.eu/export-testimonies/>

<sup>13</sup> Shetty, Salil. 2018. *The human cost of Turkey’s crackdown*. Amnesty International [Online]. Available from: <https://www.amnesty.org/en/latest/news/2018/06/the-human-cost-of-turkeys-crackdown/>; von der Breille, Hans. 2019. *Turks threatened over alleged links to the Gülen movement find a safe haven in Greece*. Euronews. [Online]. Available from: <https://www.euronews.com/2019/11/22/turks-persecuted-over-alleged-links-to-the-gulen-movement-find-a-safe-haven-in-greece>.

In line with the above, BVMN is further concerned with the continued pushback and disappearance of Turkish Nationals from Greece:

15. Pushback testimonies documented by BVMN and its partner organisations show how pushbacks of refugees from Greece to Turkey are both frequent and systematic and in violation of the principle of non-refoulement by returning people to their state of persecution.

16. Testimonies collected by BVMN and its partners clearly depict Turkish Nationals expressing a clear intention to claim asylum to Greek authorities. The testimonies recall Greek authorities ignoring this request and the Turkish Nationals being pushed back in clear violation of Greece's international obligations to protection. Testimonies often detail strip-searches, theft of personal belongings, beatings, arbitrary detention with no access to food and water,<sup>14</sup> and pushbacks at gunpoint over the Evros river.<sup>15</sup>

17. Further highlighting the risk of refoulment that faces pushback victims, in 2020, BVMN documented a pushback testimony that described a Kurdish asylum seeker pushed back and apprehended by Turkish soldiers who, having accused him of being a 'terrorist', surrendered him to a self-proclaimed pro-state ultra-nationalist Turkish crowd, who attacked him and would have beaten him to death if the soldiers had not eventually intervened.<sup>16</sup>

18. Similarly, in 2020, the Working Group on Enforced or Involuntary Disappearances together with multiple UN Special Rapporteurs communicated allegations of information pertaining to a systematic practice of state-sponsored extraterritorial abductions and forcible return of Turkish nationals from multiple States to Turkey<sup>17</sup>.

#### **IV. Secret or Incommunicado Detention During Pushbacks as a Measure Contributing to Enforced Disappearance**

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<sup>14</sup> Border Violence Monitoring Network. (2020). Asylum is in Athens [And Not Here]. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/october-17-2021-0000-405633-8n-262108-2e/>. Border Violence Monitoring Network. 2020. Really, You cannot say Anything and you cannot do Anything. This is Really Very Difficult for a Person. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/june-26-2021-0000-kastaneai-greece/>.

<sup>15</sup> Border Violence Monitoring Network. (2020). If We [the Kurds] Had a Country, We Would Have Gone There. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/december-16-2020-0000/>.

<sup>16</sup> Border Violence Monitoring Network. (2020). Really, You cannot say Anything and you cannot do Anything. This is Really Very Difficult for a Person. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/june-26-2021-0000-kastaneai-greece/>

<sup>17</sup> See: AL TUR 5/2020

Article 17: International Convention for the Protection of All Persons from Enforced Disappearance.

Article 21: International Convention for the Protection of All Persons from Enforced Disappearance.

**Explanatory Note:**

19. In line with Articles 17 and 21 of the ICCPED, the Greek State is mandated to ensure effective safeguards against arbitrary arrest and detention and the prevention of secret detention. Within the framework of a habeas corpus, the competent judicial authorities and/or investigators should have full access to any place where persons deprived of liberty may be kept or places where there are grounds to believe that such persons may be found, irrespective of whether or not such places are official detention facilities.<sup>18</sup> We assert that the widespread use of arbitrary arrest and detention during pushbacks, collective expulsions and refoulement place the Greek State in direct variance with the Convention.

20. A failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.<sup>19</sup> We also underline that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible violations, such as torture. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and access to legal counsel. The illegal and secret detention and treatment of migrants outside the protection of the law, constitute impediments to requesting appropriate asylum procedures and domestic courts exercising effective or fair jurisdiction over the case in question. As affirmed in the joint study on global practices in relation to secret detention in the context of countering terrorism<sup>20</sup>, persons held in black sites or secret detention are considered to be ‘incommunicado’. In line with the aforementioned, the pervasive use by the Greek State in holding refugees, asylum seekers and people-on-the-move in incommunicado detention is in breach of the obligations of the Convention.

21. BVMN also assert that widespread use of detention, including both secret and incommunicado detention, that ‘exceeds a matter of days’ is a further violation of the Convention and contrasts the General Assembly resolution 43/173 on the body of principles for the protection of all persons under any form of detention or imprisonment.

22. Furthermore, we reiterate that there is no minimum duration, according to international human rights standards, during which a detained person must be subjected to, for an

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<sup>18</sup> See: A/HRC/45/13/Add.3, para. 21.

<sup>19</sup> See: AL TUR 5/2020.

<sup>20</sup> See: A/HRC/13/42, Summary, and paras. 8-9.

enforced disappearance for a violation to occur.<sup>21</sup> Therefore, due to the aforementioned, we assert all detention proceedings that are not in line with international standards, should be viewed as a measure that may contribute to or risk enforced disappearances.

23. In this connection, we reiterate that any delays in prompt access to possible sites of detention, which hinders ascertaining important information towards the clarification of the facts and identification of the perpetrators, must be investigated and sanctioned, both at the criminal and administrative levels.<sup>22</sup>

### **Evidence of Secret or Incommunicado Detention within Greece:**

24. BVMN has consistently documented the detention of migrants and refugees during pushbacks. In 2021, BVMN documented 69 cases of detention of refugees of which we affirm at least 20.2% demonstrate detention we assert would amount to a breach of the Convention and meet the threshold of secret detention or incommunicado detention.

25. Pushback testimonies collected by BVMN and its partner organisations shows how migrants and refugees are routinely being held in secret detention, often within improvised detention sites such as stables, abandoned buildings and derelict railway stations.<sup>23</sup>

25.1. In 2021, BVMN partner Josoor documented a testimony<sup>24</sup> that recalled a detention site with “no sign to show that it was an official police station or detention site”. Further explaining the experience of detention, the respondent recalled “It looked like an abandoned house, [...] the officers moved us inside so fast, that we couldn’t see too many details of the place. But there was a small forest near the building.”

25.2. In 2021, BVMN partner Mobile Info Team documented a testimony<sup>25</sup> that recalled a detention site described as “an abandoned place”. The respondent reported there were about 7 “commandos”, wearing different uniforms, military clothing of dark green colour, as well as blue uniforms; some wearing lights on their heads, some wearing weapons. At this “abandoned place” there were about

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<sup>21</sup> See: CED/C/10/D/1/2013, para. 10.3.

<sup>22</sup> See: A/HRC/45/13/Add.3, para .22.

<sup>23</sup> Border Violence Monitoring Network. (2021). Annual Torture Report 2020. [Online]. Available from: <https://www.borderviolence.eu/annual-torture-report-2020/>

<sup>24</sup> Border Violence Monitoring Network. (2021). They kept saying to us ‘arab dog’ you can’ imagine how much hatred was there. It felt like it was a retaliation. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>

<sup>25</sup> Border Violence Monitoring Network. (2020). Pushback from Lagadikia Camp’. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/september-16-2020-0000-lagadikia-greece/>

100 people of different nationalities, the respondent believes that they could have been Afghan, Pakistan, Syrian nationals and ethnic Kurds.

26. Pushback testimonies collected by BVMN and its partner organisations also demonstrate how the Greek State is holding individuals in secret detention for periods lasting from a few hours<sup>26</sup> to two days<sup>27</sup> to a week<sup>28</sup> without the individuals knowing where the detention facility is located and without registering when they arrive.

26.1. In 2021, BVMN partner Josoor recorded a testimony<sup>29</sup> of an individual held in incommunicado detention for 4 days. The respondent described how he was detained with others who had already been detained for 7 or 8 days. Of additional concern to BVMN is that the respondent described how individuals were denied food and medical help.

27. Furthermore testimonies routinely depict individuals being taken to these sites in vans driven by uniformed personnel<sup>30</sup> and upon arrival, individuals are stripped of all of their belongings, including money and cell phones or any other electronic devices.<sup>31</sup> They are reportedly beaten on the way to detention so that they do not look up at the uniformed personnel, occasionally wearing signs indicating that they are belonging to Greek police, and cannot recognize or identify the surroundings of the detention facility.<sup>32</sup>

28. BVMN is increasingly concerned with the reported widespread practice of police officers destroying the phones of detained migrants and refugees resulting in the respondents not knowing where they were being held and were unable to locate their place

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<sup>26</sup> Border Violence Monitoring Network. (2019). Commandos should have taken care of humanity; they punched me and took my 400 Euros'. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/may-18-2019-0300-mandra-greece/>;

Border Violence Monitoring Network. (2020). The men were refused water and were only allowed food if they paid €2. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/february-20-2020-0500-alexandroupoli-greece/>.

<sup>27</sup> Border Violence Monitoring Network. (2019). They beat us with a baton without caring which part of the body they would hit. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/november-6-2019-0000-orestiada/>

<sup>28</sup> See: A/HRC/13/42, Summary, and paras. 8-9.

<sup>29</sup> Border Violence Monitoring Network. (2021). When we asked for asylum, they sent the officers wearing masks to beat us. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/february-16-2021-0000-lavara-karayusuflu/>

<sup>30</sup> Border Violence Monitoring Network. (2020). Removed from Thessaloniki and pushed back across the Meric River. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-16-2020-0000-meric-river-grk-tur/>.

<sup>31</sup> Border Violence Monitoring Network. (2019). Beaten and imprisoned by Greek Police . [Online]. Available from: <https://www.borderviolence.eu/violence-reports/october-24-2019-0000-nea-vyssa/>.

<sup>32</sup> Border Violence Monitoring Network. (2019). They beat us with a baton without caring which part of the body they would hit. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/november-6-2019-0000-orestiada/>

of detention using GPS.<sup>33</sup> We assert that this demonstrates systematic practices and strategies of denial and concealment that effectively place migrants and refugees outside the protection of the law without contact with the outside world, which constitutes an act of torture or degrading treatment or punishment.<sup>34</sup>

29. From the testimonies received, it appears that there is no official registration process for migrants brought to detention centres. Rather, they are stripped of any pre-existing registration status in order to deny that they have resided in Greek territory.<sup>35</sup> Reportedly, detention authorities do not record information on the date, time, and location of migrants' detention, nor do they ensure that the release of a detained person can be reliably verified in accordance with relevant human rights standards. This modus operandi of detention obscures the existence of detained persons and allows no exchange or contact with the outside world, amounting to de facto incommunicado detention.

30. BVMN asserts that there is well documented evidence to demonstrate how conditions within secret detention facilities are "inhumane". Testimonies collected by BVMN show how migrants have been held in vastly overcrowded cells<sup>36</sup> in which mistreatment of detainees through severe and repeated beatings is commonly reported<sup>37</sup>. Testimonies also depict a lack of food and water,<sup>38</sup> filthy toilets that transmit disease,<sup>39</sup> and, in some cases, the use of electric shocks.<sup>40</sup> In this regard, we recall that disappearances are viewed as "inseparably linked" to treatment that amounts to torture or to cruel, inhuman or degrading

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<sup>33</sup> Ibid

<sup>34</sup> Communications Nos. 540/1993, Celis Laureano v. Peru, Views adopted on 25 March 1996, para. 8.5; 458/1991, Mukong v. Cameroon, Views adopted on 24 July 1994, para. 9.4; 440/1990, El-Megreisi v. Libyan Arab Jamahiriya, Views adopted on 23 March 1994, para. 5; 1327/2004, Grioua v Algeria, Views adopted by the Human Rights Committee on 10 July 2007, para. 7.6; and 1422/2005, El Hassy v Libya, Views adopted by the Human Rights Committee on 24 October 2007, para. 6.2.

<sup>35</sup> Border Violence Monitoring Network. (2021). When we asked for asylum, they sent the officers wearing masks to beat us. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-14-2020-1300-evos-meric-river-near-gemici-turkey/>

<sup>36</sup> Border Violence Monitoring Network. (2020). Removed from Thessaloniki and pushed back across the Meric River. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-16-2020-0000-meric-river-grk-tur/>

<sup>37</sup> Border Violence Monitoring Network. (2020). People were forced to undress and then, eight by eight, were loaded into a boat. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/february-8-2020-2100-alexandroupoli-greece/>.

<sup>38</sup> Border Violence Monitoring Network. (2019). Commandos should have taken care of humanity; they punched me and took my 400 Euros'. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/may-18-2019-0300-mandra-greece/>;

<sup>39</sup> Border Violence Monitoring Network. (2019). They arrived in two vehicles with four policeman. One was a white Nissan pickup while the other one was a Jeep. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/july-3-2019-1100-komotini-greece/>.

<sup>40</sup> Border Violence Monitoring Network. (2020). Removed from Thessaloniki and pushed back across the Meric River. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-16-2020-0000-meric-river-grk-tur/>

treatment or punishment.<sup>41</sup> Furthermore, the situation of relatives who remain without knowledge about the fate or whereabouts of a disappeared person for extended periods of time likewise constitutes torture or cruel, inhuman or degrading treatment.<sup>42</sup>

### **Secret or Incommunicado Detention of Turkish Nationals**

31. Testimonies collected by BVMN demonstrate how routinely, Turkish Nationals are being held in secret or incommunicado detention:

31.1. In 2020<sup>43</sup>, BVMN documented a pushback testimony of a Kurdish-Turkish national who during the pushback to Turkey 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.

31.2. In 2020<sup>44</sup>, BVMN documented another pushback of 3 Kurdish-Turkish nationals, who during the pushback to Turkey 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.

31.3. In 2020<sup>45</sup>, BVMN documented another pushback of Kurdish-Turkish national, who recalled how he was taken to the Edirne gendarmerie station. He described how he was kept in detention incommunicado for one week without food or the right to contact a lawyer or anyone else.

### **Secret or Incommunicado Detention of Minors**

32. Recalling the general comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearance, BVMN further affirms how the enforced disappearance of a child constitutes an exacerbation of the violation of

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<sup>41</sup> Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7.

<sup>42</sup> Communications Nos. 107/1981, *Almeida de Quinteros v Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

<sup>43</sup> Border Violence Monitoring Network. (2020). Asylum is in Athens [and not here]. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/october-17-2021-0000-405633-8n-262108-2e/>

<sup>44</sup> Border Violence Monitoring Network. (2020). The system is like this, come back tomorrow. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e/>

<sup>45</sup> Border Violence Monitoring Network. (2020). Really, You cannot say Anything and you cannot do Anything. This is Really Very Difficult for a Person. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/june-26-2021-0000-kastaneai-greece/>

the multiplicity of rights protection by the convention on the protection of all persons from enforced disappearance and an extreme form of violence against children.

33. In line with the aforementioned general comment, BVMN is extremely concerned with the continued and indiscriminate use of pushbacks against children and the evidence that demonstrates how minors are reportedly among those detained in such unknown locations before being returned to Turkey.<sup>46</sup>

34. Furthermore, BVMN has evidence of children being amongst those detained by the Greek authorities in secret or incommunicado. Of the 14 individual cases of secret or incommunicado detention as documented by BVMN and its partner organisations, 50% described the presence of children and minors.

34.1. In 2021, BVMN partner Josoor documented a testimony<sup>47</sup> that recalled a detention site 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’”.

34.2. In 2021, BVMN partner Josoor documented a testimony<sup>48</sup> that recalled a group being held incommunicado. The testimony explained how the group had asked for a phone call and a lawyer, but the officer said “no no” to both requests. Reflecting the indiscriminate nature of secret and incommunicado detention, the testimony recalls a 3-year-old child also being held within the detention site.

## **V. Criminalisation of Human Rights Defenders and Persons Involved in the Investigation and Documentation of Enforced Disappearances**

Article 12: International Convention for the Protection of All Persons from Enforced Disappearance.

Article 18 (2): International Convention for the Protection of All Persons from Enforced Disappearance.

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<sup>46</sup> *Ibid*

<sup>47</sup>Border Violence Monitoring Network. (2021). They kept saying to us ‘arab dog’ you can’ imagine how much hatred was there. It felt like it was a retaliation. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>

<sup>48</sup>Border Violence Monitoring Network. (2021). They were torturing him...the officer was trying to drown him. - four cubans recount a violent pushback of 40 people from Greece to Turkey. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/october-31-2021-0000-near-alexandroupolis-around-feres/>

Article 24 (7): International Convention for the Protection of All Persons from Enforced Disappearance.

**Explanatory note:**

35. Recalling previous comments made by the Committee<sup>49</sup>, BVMN affirms that the persecution and discrediting of human rights defenders and organisations in Greece working to assist victims of enforced disappearance, or document, report on and monitor systematic practices that contribute to enforced disappearances is in variance with Article 12, Article 18(2) and 24 (7) of the Convention.

36. Further to this, BVMN asserts that the criminalization of human rights organisations documenting enforced disappearance in Greece must be viewed as a form of ill-treatment or intimidation and thus breaches the obligations of the Greek State set under the Convention.

37. Further to this, BVMN asserts that that human rights organisations in Greece who document, report on and monitor systematic practices that contribute to enforced disappearances such as pushbacks or secret and incommunicado detention, or who assist victims of enforced disappearances have been publicly defamed, discredited or targeted by the Greek State. Thus, in line with the aforementioned we assert that Greece is breaching its obligations set under the Convention.

**Evidence of Criminalisation:**

38. BVMN is concerned with the ongoing practice by the Greek State of publicly defaming, discrediting or targeting human rights organisations in Greece who document and monitor systematic practices that contribute to enforced disappearances such as pushbacks or secret and incommunicado detention, or who assist victims of enforced disappearances.

38.1. In September 2020, the Greek police issued a press release about a criminal investigation into 33 Human Rights Defenders from four international NGOs, which report on pushbacks and enforced disappearance from Greece, "for an organised circuit to facilitate the illegal entry of aliens into Greek territory"<sup>50</sup>. The accusations included espionage, violating state secrets, creating and participating in criminal organisations and violating migration law.

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<sup>49</sup> See: CED/C/MEX/CO/1

<sup>50</sup> Popotas, Dimitri. 2020. Μεταναστευτικό: Στα πράσα τέσσερις γερμανικές ΜΚΟ για δουλεμπόριο και κατασκοπεία στη Λέσβο. Protothema. [online]. Available from: <https://www.protothema.gr/greece/article/1051430/metanasteutiko-sta-prasa-tesseris-germanikes-mko-gia-douleborio-kai-kataskopeia-sti-lesvo/>.

38.2. Among the four NGOs, Mare Liberum, a civil society organisation who has been involved in the denunciation of enforced disappearance within Greece and of whom has documented cases of pushbacks, refoulement or enforced disappearance from Greek territory was subjected to criminalization<sup>51</sup>.

38.3. Another among the four, Josoor, a civil society organisation working to document, investigate and support victims of enforced disappearances was, in 2020 to 2021, subjected to an intense criminalization campaign by the Greek State.

39. The repression of aid distribution sites is also another method the Greek state has utilised to limit the ability of human rights organisations to monitor, document and support victims of enforced disappearance and pushbacks.

39.1. In June 2020, several instances have been recorded of aid distribution being specifically targeted in orchestrated raids by police in and around Thessaloniki, resulting in mass arrests, enforced disappearance and pushbacks to Turkey. These aid distribution sites are well known areas in which NGOs collect evidence and testimonies of enforced disappearance. We assert that the targeting of aid distribution is part of an ongoing trend of creating a hostile environment for NGOs and migrants, that included intimidating organisations involved in the documentation of enforced disappearances and pushbacks in Greece

40. The persecution and discrediting of human rights defenders and organisations in Greece have also been observed by many independent human rights organisations or international human rights mechanisms.

40.1. The Special Rapporteur on the Situation of Human Rights Defenders has publicly commented on the ‘delegitimization and criminalization of solidarity’ in Greece and identified that the Greek State was placing undue regulatory burdens and obstacles before NGOs trying to provide legal and practical support to people on the move, and to report on violations of their rights<sup>52</sup>.

40.2. Further to this, since 2019, the Special Rapporteur on the Situation of Human Rights Defenders has communicated five cases to the Greek government regarding the criminalization, intimidation or implementation of policy that hinders the work of human rights defenders working with migrants and refugees.

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<sup>51</sup> *Ibid.*

<sup>52</sup> SRDefenders. (2021). Hearing with migrants’ rights defenders in Greece. [Online]. Available from: <https://srdefenders.org/information/hearing-with-migrants-rights-defenders-in-greece/>

40.3. In 2021, The World Organisation Against Torture (OMCT) expressed its concern about the ‘criminalisation of human rights defenders and humanitarian organisations providing assistance and defending the rights of migrants and asylum seekers on Lesbos island’ with the view to urge the Greek authorities ‘to immediately put an end to the outlawing of solidarity with people on the move’.<sup>53</sup> The statement also recalled that the Greek State has consistently failed to submit information concerning the alleged intimidation and harassment of human rights defenders and humanitarian workers and volunteers as required under the UNCAT proceedings.

40.4. Following a press statement by the police department of Mytilini in July 2021, which announced another case of criminalization against NGOs on Lesbos, Human Rights Watch warned that Greek authorities “are using criminal investigations to harass and intimidate groups that investigate abuses against migrants at Greece’s border.”<sup>54</sup>

## **VI. Failure to carry out ex officio, prompt and effective investigations**

Article 12: International Convention for the Protection of All Persons from Enforced Disappearance.

Article 22: International Convention for the Protection of All Persons from Enforced Disappearance.

### **Explanatory note:**

41. We assert that the consistent unwillingness by Greek authorities to promptly and impartially initiate investigations in situations where migrants are allegedly at risk of disappearance, such as in situations of secret detention, and establish necessary measures to prevent and impose sanctions for the failure to properly record the deprivation of liberty of persons-on-the-move is in flagrant violation to its obligations as set out within Articles 12 and 22 of the ICPPED.

42. Furthermore, we recall the multiple measures being implemented by the Greek State that we affirm, in violation of Article 12 of the ICPPED, create undue obstacles or delays in investigation.

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<sup>53</sup>OMCT. (2021). Greece: Ongoing crackdown on migrants’ rights defenders as pushbacks of people on the move continue. [Online]. Available from: <https://www.omct.org/en/resources/statements/greece-ongoing-crackdown-on-migrants-rights-defenders-as-pushbacks-of-people-on-the-move-continue>

<sup>54</sup>Human Rights Watch. (2021). Greek Authorities Target NGOs Reporting Abuses against Migrants. [Online]. Available from: <https://www.hrw.org/news/2021/07/22/greek-authorities-target-ngos-reporting-abuses-against-migrants>

43. Additionally, we maintain that the absence of effective accountability systems and judicial investigations into the responsibility of the perpetrators of the reported cases of secret detention constitute a further breach of the convention, namely Article 22.

44. Lastly, we assert that the practice of pushbacks combined with secret detention of migrants, along with the Greek authorities' unwillingness to investigate these cases, lead not only to a cover-up of these practices but also to concealment of the fate and whereabouts of the person in question in cases where any traces of the disappeared person after the pushback are lost. We recall that situations in which “stranded migrants drown at sea, notably in the Mediterranean, and die or remain missing on land routes (...) may trigger State responsibility as they may constitute practices tantamount to disappearances or may facilitate disappearances because they render the finding or identification of missing persons very difficult.”<sup>55</sup> In line with the aforementioned, we sustain that the Greek State is acting in variance with its obligations under the Convention.

#### **Absence of Effective Accountability Systems and Judicial Investigations into the Responsibility of the Perpetrators:**

45. Evidence collected by BVMN show how the Greek law enforced have routinely adopted measures to conceal their identity during pushbacks and secret detention, in what we assert is a deliberate attempt to hinder accountability systems into the responsibility of perpetrators:

45.1. In 2021, BVMN partner Josoor recorded a testimony of a pushback and secret detention<sup>56</sup>. The testimony recalls how when the officers apprehended the respondent and the transit group, the officers began to beat them. The officers were wearing either completely black clothes with balaclavas or Greek military uniforms without balaclavas. The respondent explained that they did not understand what the officers were speaking as they were speaking in Greek or English. “We didn’t understand what they were saying. Even if you try to talk to them, they don’t care to listen, and we were so scared to look at their faces” the respondent remarked.

45.2. In 2021, BVMN partner Josoor recorded a testimony<sup>57</sup> in which the respondent recalled being taken by Greek officers to a detention centre and placed

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<sup>55</sup> A/HRC/36/39/Add.2, para. 44.

<sup>56</sup> Border Violence Monitoring Network. (2021). THEY WASN’T MILITARY AND THEY JUST KEEP HIT YOU WITH THE BATON. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/january-18-2021-0000-tychero-salicali/>

<sup>57</sup> Border Violence Monitoring Network. (2021).THEY SCREAMED AND TOLD ONE OF US ‘FUCK YOU AND FUCK CAMP.. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/july-7-2021-0000-lagyna/>

in a three-by-three metre cell. Recalling the experience, the respondent explained “*It was nasty. They didn’t have anything clean in there. It was like they were bringing dogs to put them there.*” At first, the respondent was alone in the cell, but he went to sleep around 10 pm and when we woke up in the morning, he found around 70 others with him. By the end of the day, there were around 120 people in the same cell. The respondent recalled spending two days in the cell, during which time he was not provided with any food or water. He recalled, “*In the toilet there was water. I didn’t know where that water came from but I drank it because I was thirsty.*” At around 11 pm on the second day, the respondent and around 120 others, from Syria, Morocco, Afghanistan, and Iraq, were loaded into the back of two big green camouflage military trucks by four officers wearing black uniforms and balaclavas. We assert the use of balaclavas was used to obscure the identities of officers involved in the secret detention.

46. The Greek State permits the practice of closing cases in which there is an indefinite delay or in which the case has ‘unknown perpetrators’. Therefore, the migrants inability to identify law enforcement officers, due to the aforementioned attempts to conceal the perpetrators identity, would result in the closure of the case, and ensure perpetrators avoid accountability.

#### **Violation of Due Diligence Obligation:**

47. The systematic pushback into areas in which migrants are at risk of disappearance, including through non-state actors, evidenced by various testimonies gathered by BVMN, engages State responsibility on the basis of due diligence obligations.

48. Due diligence process require that a State in a position in which this State knew or should have known needs to take appropriate measures in circumstances in which reportedly disappearances occurred regarding a particularly vulnerable group, including the obligation of constant monitoring of a situation of specific risk as well as the establishment of appropriate policy frameworks.<sup>58</sup>

49. We assert that the extensive reporting on the dangers of pushing back migrants into risky border regions such as the Evros river, where they are at risk of drowning, along with multiple testimonies that evidence this risk as well as forensic reports, the failure to implement preventive policy frameworks that can prevent this risk from materialising

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<sup>58</sup> See: Inter-American Court of Human Rights, González et al. (‘Cotton Field’) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs. Judgement of November 16, 2009, Series C No. 205, para. 284.

constitutes a violation of the positive obligations of Greece to ensure the protection from secret detention and enforced disappearances<sup>59</sup>.

### **Barriers to an Effective Investigation:**

50. Furthermore we assert the Greek State is implementing policies or practice that we affirm places undue barriers on the ability to implement an effective investigation. We maintain that the implementation of a military zone along the Evros River in addition to the lack of cooperation with Turkish authorities impede a rapid forensic investigation.

51. Moreover, we assert that the criminalization and investigation of various members of humanitarian organisations have further contributed to the creation of obstacles and delays in those investigation, violating article 12 ICCPED.

## **VII. Recommendations**

52. The Border Violence Monitoring Network is deeply concerned with the continued rights violations being carried out by the Greek authorities. Therefore, considering the aforementioned evidence we issue the following recommendations:

52.1. Recommends that the Greek State implement effective measures to prevent and punish any possible acts of intimidation, persecution and reprisals of NGOs and civil society organisations documenting, monitoring or supporting victims of enforced disappearances.

52.2. Recommends that the Greek State must ensure cooperation with UN Special Procedures, and permit without delay, access to its territory for UN Special Rapporteurs, Independent Experts and members of Working Groups.

52.3. Recommends that the Greek State must establish investigative teams that can work in a competent, independent and autonomous manner, with no relation with any authorities that might have an interest in hindering the investigations.

52.4. Recommends that the Greek State implement measures to immediate cease measures or actions that contribute to the risk of enforced disappearances, including pushbacks and secret or incommunicado detention.

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<sup>59</sup> See: ECtHR, *Budayeva and others v. Russia*, (Judgement) App. No. 15339/02, (ECHR, 20 March 2008), para. 102.