Croatia's Compliance with the Convention on the Rights of the Child

Written Input for the 89th Pre-Sessional Working Group of the Committee on the Rights of the Child

Submitted by:

Border Violence Monitoring Network

1. **Reporting Organisation**

1.Border Violence Monitoring Network (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, Greece and Turkey since the network’s formulation in 2016. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field volunteers who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

1. **Executive Summary**

2. Despite the ratification of the Convention on the Rights of the Child (CRC) and its subsequent integration into Croatian domestic law, we assert that Croatia has failed to meet its obligations under the Committee.

3. We affirm that the continuous action of pushbacks and collective expulsion of refugees and migrants, carried out by Croatian authorities is illegal and in contradiction to the obligations set out under the Convention on the Rights of the Child.

4. Furthermore, we maintain that the continued and credible allegations published by a range of NGOs and international monitoring bodies demonstrates how pushbacks carried out by Croatian authorities, are in violation of articles including but not limited to:

Article 3 (1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 6 (1): States Parties recognize that every child has the inherent right to life.

Article 9 (1): States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Article 20 (1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Article 22 (1): States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties".

Article 37: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment [...] (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time [...] (c) Every child deprived of liberty shall be treated with humanity and respect [...] every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest [...] (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

1. **Torture, Violence, Inhuman Treatment and Arbitrary Detention of Children During Pushbacks as a Violation of the Convention of the Rights of the Child**

**Article 3 CRC:** Article 3 of the Convention of the Rights of the Child

**Article 6 CRC:** Article 6 of the Convention of the Rights of the Child

**Article 20 CRC:** Article 20 of the Convention of the Rights of the Child

**Article 37 CRC:** Article 37 of the Convention of the Rights of the Child

**Explanatory note:**

5. ‘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.

6. Pushbacks encompass the legal concept of *non-refoulement* which are implicitly prohibited under Article 3, 6, 20 and 37 of the CRC.[[1]](#footnote-1) The Child’s Rights Committee clearly outlined in General Comment 6 that States ‘must fully respect *non-refoulemen*t obligations deriving from international human rights, humanitarian and refugee law’,[[2]](#footnote-2) and that ‘States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed [...] The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner’.[[3]](#footnote-3)

7. In *D.D. v. Spain* (No. 4/2016) the Committee clearly held that the CRC applies to all children, and the Convention cannot be curtailed at the border or due to a child’s legal status or lack thereof.

8. Moreover, pushbacks often themselves entail treatment that is contrary to Article 6 and 37 of the CRC. For example, pushbacks can directly entail death, torture, CIDT, arbitrary detention and indignified detention of children with adults without access to legal assistance. BVMN asserts that the well-documented evidence of the mass proliferation of violence and abuse during pushbacks carried out by Croatian authorities, that BVMN asserts amount to torture, demonstrates an infringement of Article 37 of the Convention of the Rights of the Child.

9. Furthermore, we assert that due to the inherently violent nature of pushbacks that routinely places victims in situations that pose a real and immediate threat to life, the Croatian state is knowingly breaching Article 6 of the Convention of the Rights of the Child.

**Evidence of children involved in pushbacks from Croatia**

10. BVMN has consistently documented pushbacks of children by Croatian authorities.

10.1 In 2018 BVMN collected 191 pushback testimonies from Croatia, exposing the ill-treatment and abuse of an estimated 1738 people. Demonstrating the indiscriminate nature of these rights violations, of the 191 pushback testimonies collected, 45% had identified that they were pushed back in a group that contained one or more children.

10.2. Similarly in 2019, BVMN collected 235 pushback testimonies from Croatia, exposing the ill-treatment and abuse of an estimated 3040 people. Of the 235 pushback testimonies collected, 35% had identified that they were pushed back in a group that contained one or more children.

10.3. Again in 2020, BVMN collected 124 pushback testimonies from Croatia, exposing the ill-treatment and abuse of an estimated 1827 people. Of the 124 pushback testimonies collected, 39% had identified that they were pushed back in a group that contained one or more children, clearly demonstrating the indiscriminate nature of these violations.

10.4. Between the 1st of January to 30th of April 2021, BVMN has collected 43 pushback testimonies from Croatia, exposing the ill-treatment and abuse of an estimated 495 people. Of the 43 pushback testimonies collected, 56% had identified that they were pushed back in a group that contained one or more children. Furthermore, in March 2021, BVMN member organisations reported an ‘uptick in the pushback of groups including families or unaccompanied minors’.[[4]](#footnote-4)

11. The testimonies collected by BVMN have demonstrated that pushbacks are an endemic human rights issue that have been consistently documented over multiple years.

11.1. In 2018, BVMN partner No Name Kitchen collected a testimony of a pushback of a family from Croatia to Bosnia.[[5]](#footnote-5) The family had two children, aged 7 and 9. The pushback was carried out by multiple officers wearing black balaclavas, black uniforms and carrying batons. Recalling the pushback across the Croatian - Bosnian border and the destruction of his family's belongings the respondent said “In this time, I didn’t think about mobile, power bank, money, only that time you can think about moving your wife and child. At that time, you are afraid, also your child is afraid, woman is afraid, so many police.” This testimony was one of 191 pushback testimonies collected from Croatia that year.

11.2. In 2019, BVMN partner No Name Kitchen collected a testimony from a 14-year-old child who was part of a pushback group of 15 people, most minors with the youngest being only 10 years old.[[6]](#footnote-6) The group was taken by Croatian officers to the Batrovci border crossing and pushed back to Serbia. During the pushback the group of minors were subject to continued violence by multiple Croatian officers including being attacked with electric discharge weapons. This testimony was one of 235 pushback testimonies collected from Croatia that year.

11.3. In 2020, BVMN partner No Name Kitchen collected a testimony of a family of four who was pushed back from Croatia.[[7]](#footnote-7) The family had two children, one aged 13 years and one aged only 8 months.The Croatian officers who apprehended and pushed back the group also subjected them to bodily searches, that included the forced removal of their clothes. This testimony was one of 124 pushback testimonies collected from Croatia that year.

11.4. In 2021, BVMN partner No Name Kitchen collected a testimony from a 15 year-old unaccompanied minor from Afghanistan who was part of a transit group of five people, all aged between 15 and 20 years old.[[8]](#footnote-8) The respondent recalls being taken to the Bajakova Border crossing by three male Croatian officers and being pushed back into Serbia. The respondent explained the Croatian authorities followed him into Serbian territory before letting them go, believing this was to ensure they would be protected from being apprehended by any Serbian authorities, and thus ensuring that they would remain in Serbia. This testimony is one of 43 pushback testimonies collected from Croatia between January and April so far this year.

12. In addition to the reporting efforts of partner organisations in the Border Violence Monitoring Network, a range of other international actors and civil society organisations have similarly documented Croatia's continued use of pushbacks.

13. Between January to September 2019, the UNHCR and Serbian partners reported 673 pushbacks from Croatia to either Serbia or Bosnia and Herzegovina involving 4,868 people.[[9]](#footnote-9)

14. In 2020, The Danish Refugee Council (DRC) documented 16,000 illegal pushbacks carried out by Croatian border guards, including 800 incidents involving children. "Compared to previous months, the rate of women and children reporting pushbacks is also increasing," notes a report from November 2020.[[10]](#footnote-10)

**Evidence of torture, violence and abuse during Croatian pushbacks:**

15.As the aforementioned evidence demonstrates, children-on-the-move are consistently being subjected to pushbacks from Croatia. BVMN affirms, that during these pushbacks, children are witnessing or becoming victims of torture, violence and abuse at the hands of the Croatian authorities.

16. BVMN reported that in 2019, 80% of pushbacks carried out by Croatian authorities contained one of more forms of torture or inhuman treatment. That same year, it was also documented that 35% of pushbacks contained children.

17. BVMN reported that in 2020, 89% of pushbacks carried out by Croatian authorities contained one of more forms of torture or inhuman treatment. That same year, it was also documented that 39% of pushbacks contained children.

18. The data collected by BVMN is also supplemented by victim testimonies that routinely describe harrowing encounters with Croatian authorities.

18.1. In 2018, BVMN collected a testimony which detailed how a 17-year-old was caught by Croatian police who “beat him strongly with a baton”.[[11]](#footnote-11) When speaking about the 17-year-old after the pushback one of the respondents explained that, “psychically he changed, before he laughed but now, he is giving up on himself”.[[12]](#footnote-12) Likewise, detailing a different pushback that year, a respondent explained that the police, “took us out of the van and beat us one by one, they beat even the kids”.[[13]](#footnote-13) This testimony is one of 191 pushback testimonies collected from Croatia that year.

18.2. In 2019, BVMN collected a testimony which detailed how people, including minors, were forced to walk through a corridor of police beating them with batons.[[14]](#footnote-14) Other reports detailed how unaccompanied minors (aged 15) who were travelling unaccompanied having lost their families in Syria were kicked with heavy boots while on the ground both “in the head and back”.[[15]](#footnote-15) Similarly three unaccompanied minors (aged 16-17) were subjected to “four/five hours of intimidation and violent episodes” before then being “transferred to the Serbian side of the border by foot”.[[16]](#footnote-16) Another testimony details how a group of three people (one being 16) were forced to crouch to the ground “at which point the officers surrounded their position and began to beat the transit group with batons, punches, and kicking; in the process one officer produced a handheld electric discharge weapon and used it to administer an electric shock to the respondents leg”.[[17]](#footnote-17) In another testimony the 16-year-old respondent details, with 3 other people aged 14-19, being taken by Croatian officers to a basement room, “directly below the outbuildings of Border Crossing Point (BCP)”.[[18]](#footnote-18) There the officers hit the transit group with closed fists and used a baton to strike them. During the beating, one officer used a handheld electric discharge weapon to administer an electric shock to the 16-year-old respondents upper thigh. After 1.5 hours of detention the group was handed over to Serbian police. This testimony was one of 235 pushback testimonies collected from Croatia that year.

18.3. In 2020, BVMN reported on one incident where three young men, including one minor, were stopped by Croatian police a few kilometers into the country. After crossing the border from Slovenia,[[19]](#footnote-19) the officers told the group to lay prone on the ground and proceeded to beat them with batons. The three men were later driven to the border with Bosnia and Herzegovina in a van with another seven people, and, once arrived at the border, they were let out of the vehicle one at a time and beaten in turn by six Croatian officers, arranged in a circle around the victim. The respondents were punched, kicked and beaten with batons, incurring in severe injuries, including a broken arm for one of them. This testimony was one of 124 pushback testimonies collected from Croatia that year.

18.4. In 2021, BVMN recorded a testimony where a three- and ten-year-old watched as a Croatian police officer held a knife to their fatherʼs throat, threatening to kill him.[[20]](#footnote-20) Reportedly, the officer also hit their father on his head two times with the knifeʼs handle. When the children started shouting and crying they were told to “shut up” by one of the officers. Another recent testimony described the way five unaccompanied minors were pushed back, even though the Croatian officers were aware of their age. The pushback involved them being laid out prone on the floor and beaten with batons, before being forced into the Korana river. The minor respondent informed BVMN, “Some people have drowned in this water, two of my friends also don’t know how to swim, and we all had to jump over the river, or they would’ve beaten us up, it was very scary for us”.[[21]](#footnote-21) In such cases, minors are intentionally merged with adults in the transit group to affect widespread violence, but the impact of these attacks for young people takes on additional dimensions, forming part of their juvenile experience, threatening to affect their development as children and adults.[[22]](#footnote-22) This testimony is one of 43 pushback testimonies collected from Croatia between January and April so far this year.

19. In light of these incidents, parents often report how children have a heightened fear of the dark, have difficulty sleeping, or suddenly wake up crying during the night, and as explored in BVMNʼs November 2020 Report, the lasting impact of these traumatic events represents a slow violence that extends beyond the pushback itself.[[23]](#footnote-23)

20. Further to BVMN’s continued documentation of pushbacks and torture of children-on-the-move, a range of other international actors and civil society organisations have also documented evidence of the pushback and mistreatment of children.

21. In 2017, Madina Hussiny, a 6-year-old girl was killed by a train only minutes after being pushed back from Croatia to Serbia demonstrating the deadly consequences of pushbacks.[[24]](#footnote-24) Madina was one of six children who were forced, by Croatian police, to walk along an active train line after being pushed back. A series of investigations and lawsuits have since attempted to attain justice for the Hussiny family, but in April 2021, the Croatian Constitutional Court ruled that the constitutional rights of the Hussiny family were not violated because the investigation was conducted efficiently and objectively.[[25]](#footnote-25)

22. In 2018 Human Rights Watch released a report describing how, since 2016, it has documented summary collective expulsions from Croatia to Serbia and Bosnia and Herzegovina. Human Rights Watch reported that in some instances, Croatian border officials have used force, pummeling people with fists, kicking them, and making them run gauntlets between lines of police officers. They further state that violence has been directed against women and children and that unlike lawful deportations, migrants are not returned at ports of entry, but rather in remote border areas, including, at times, forced to cross freezing streams.[[26]](#footnote-26)

23. In 2018, Human Rights Watch interviewed 20 people, including 11 heads of families and 1 unaccompanied boy. They reported that Croatian police deported them to Bosnia and Herzegovina without due process after detaining them deep inside Croatian territory. Sixteen people, including women and children, said that they were slapped, pummelled with fists, beaten with police batons made of rubber or wood, or kicked by people they described as or who identified themselves as Croatian police during the pushbacks.[[27]](#footnote-27) Four of them later required treatment at a Bosnian Hospital.

23.1. Among the testimonies reported by Human Rights Watch was the testimony of a 15-year old boy: “They wore dark blue uniforms with masks, and as I exited the van, both police hit me with their batons. I felt a blow to my neck and I fell forward and wanted to get up. At that point, I was on the Bosnian side of the border stones, where another six Croatian police officers stood waiting. They were all over me, beating me. I don’t know how they beat me, but it was hard and strong, and I tried to protect my face. I was so badly beaten on my back that I still can’t sleep on it properly because of the pain. When they saw that my nose was bleeding, and that my hand was injured and that I couldn’t walk, they stopped…. They yelled “Go!” and as I was trying to leave, they fired guns in the air”.

23.2. Additionally Human Rights Watch described how an Iranian man said that police officers in dark blue uniforms beat him and his 12-year-old son in what he called the “Tunnel of Death: “They [police] make this tunnel [lined up on each side] and you have to pass. They took us out of the van one by one and they started beating me with batons from both sides. I was beaten on my arm, shoulder, and on my knee with batons. My son was beaten with batons on his back and on his head…We kept screaming ‘my son my son!’ or ‘my dad my dad!’ but they didn’t care. They kept beating at us until we crossed the border. Even my wife was struck across her back with a baton. The child was so scared and was crying for half an hour and then wouldn’t speak for a long time”.

23.3. Human Rights Watch further described how a Syrian mother of six, who travelled with her husband’s 16-year-old brother and three of her children, ages 2, 4, and 10, reported that three police officers in dark uniforms beat her husband’s brother in front of her and her children.

24. In 2019, Amnesty International published a comprehensive report that denounced the systematic practice of summary expulsions, or pushbacks of people, from Croatia without consideration of their individual circumstances and with the presence of children.[[28]](#footnote-28) One respondent reported being summarily returned from Croatia twice, together with his wife and three small children, even after repeatedly requesting the possibility to apply for asylum. The family was detained, their belongings destroyed, including their phones and documents, and later they were put on a van and driven back to Bosnia.

25. In 2019, the Croatian Ombudsperson for Children reported on the growing evidence of the violent pushbacks of children and minors occurring at the Croatian borders.[[29]](#footnote-29) The Ombudsperson's report indicated that in 2019 their office received 10 complaints on violations of migrant children’s rights. These complaints include verbal and physical violence, destruction of personal belongings and illegal pushback to the neighbouring countries (Bosnia and Herzegovina and Serbia) that was carried out without the children being given the possibility to seek international protection.

26. In 2019, a Save the Children outreach team based in Belgrade documented the pushbacks of 99 children at the Croatian border.[[30]](#footnote-30) Through the collection of victim testimonies they assert that 34% of children pushed back were subjected to violence

27. In 2019, following the identification of 50 men walking close to the border with Croatia who had been subjected to physical violence, the United Nations Mission in Bosnia and Herzegovina renewed calls for urgent action to end the violent pushbacks and collective expulsions of migrants and refugees by police trying to stop them entering Croatia. In their statement, the UN mission highlighted the violent and indiscriminate nature of pushback.[[31]](#footnote-31)

28. Furthermore, in 2020 two criminal complaints were filed by BVMN member Center for Peace Studies for two separate cases, against unknown police perpetrators due to a reasonable doubt that they kept in detention 13 victims in total, two of whom were children, and then handed them over to ten armed men dressed in black uniforms, with balaclavas on their heads. The complaints stated that the men in black uniforms tortured, humiliated and pushed back the victims from the territory of the Republic of Croatia to Bosnia and Herzegovina, and that one of the victims was raped by one of the perpetrators.[[32]](#footnote-32)

29. In 2020, the Danish Refugee Council reported of a series of brutal pushbacks involving dozens of asylum-seekers on the Bosnian-Croatian border.[[33]](#footnote-33) Again, in one of these instances, five people, including two minors, who had crossed into Croatia near the Šturlić settlement were apprehended by uniformed police, detained at the police station and later taken “to some unknown location, where they were put in a van in the charge of 10 armed people, dressed in black and with full face balaclavas, army boots and with flashlights on their foreheads”. There they were forced to lie down, restrained and brutally beaten, kicked, and whipped. One of them was sexually assaulted with a branch.

**Evidence of arbitrary and inhuman detention during Croatian pushbacks:**

30. Article 37(b) of the CRC reads, “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. Article 37(c) stipulates that every detained child shall be treated with humanity and respect and should generally be separated from adults with Article 37(d) going on to require that children have prompt access to legal and other assistance, “as the right to challenge the legality of the deprivation of his or her liberty before a court” or other competent body.

31. Data collected by BVMN in 2020 indicates that up to 48% of testimonies collected of pushback by Croatian authorities resulted in detention, of which 66% of detention cases were held with no access to food, water or toilets[[34]](#footnote-34). Detention of children, within both formal and informal facilities, is often arbitrary, extralegal, inhuman, includes the detention of minors with adults and without access to legal and other assistance to challenge such detention. As such, this routine practice of the Croatian authorities is in clear variance with the Articles of the CRC highlighted in the previous paragraph.

32. Further demonstrating the violence and abuse that minors are subjected to whilst in detention, in 2019 BVMN reported on the pushback of three unaccompanied minors who were pushed back from Croatia to Serbia.[[35]](#footnote-35) Before being pushed back, the three children were arrested and detained by the Croatian authorities in what was destined by the respondents as an “empty basement room” that only had room for “seven or six people”. During their time in detention, several episodes of violence were inflicted upon the group. The respondent stated that the first he received was a series of fist punches by the male Croatian border officer that apprehended him (the assault with blows from closed fists lasting approximately 5 minutes according to the respondents statements). The officer, his female colleague, and the man in the green uniform shouted at the boys repeatedly to not look them in the face. “Not only were the minors beaten repeatedly and shouted at, but the officers also mocked and threatened them. When the respondent had asked for water, he was denied and laughed at. Because he was looking at the officer’s face when requesting, he was also called an animal and received a frontal slap in the face. The officers were also stated to have humiliated the group by feinting at delivering blows (pretending to strike for the boys) but missing intentionally every time, just to intimidate and tire the group out repeatedly”.[[36]](#footnote-36)

1. **Family Separation: Pushbacks as a Violation of the Convention of the Rights of The Child**

**Article 3 CRC:** Article 3 of the Convention of the Rights of the Child.

**Article 9 CRC:** Article 9 of the Convention of the Rights of the Child.

**Article 10 CRC:** Article 10 of the Convention of the Rights of the Child.

**Article 20 CRC:** Article 20 of the Convention of the Rights of the Child.

**Article 22 CRC:** Article 22 of the Convention of the Rights of the Child

**Explanatory note**

33. The right to family life is drawn from family rights accorded to children under international law including Articles 3, 9, 10 and 20 CRC.

34. BVMN stresses that the implementation of the right to family unity in the migratory context necessitates at least two obligations. Firstly, that States refrain from actions that would disrupt an intact family (Article 9). Secondly, it takes action to allow a dispersed family to reunite. This secondary obligation necessitates access to protection systems (Article 22), identification of a child as unaccompanied or separated and an assessment of the best interest of the child (Article 3), without returning to a country where they would face danger (Article 6, Article 37 and General Comment No.6). Through pushbacks, the Croatian authorities systematically violate such obligations, as stipulated by the CRC.

**Pushbacks disrupting intact families**

35. As pushbacks often result in family separation they constitute a violation of Article 9(1) CRC, which reads ‘States Parties shall ensure that a child shall not be separated from his or her parents against their will’.

36. For example, in 2019 BVMN recorded a testimony of two Algerians, aged 16 and 20 who were apprehended in Kastav, Croatia who had left their larger transit group, which included the respondent’s younger brother, to buy food in the nearby town. When questioned by the police as to the location of the rest of the group and fearing something bad would happen to them the respondent explained to BVMN ‘I know where my brother is but I am scared to tell them’. Consequently, the respondent was separated from his younger minor brother and at the time of reporting they had not been reunited since.[[37]](#footnote-37)

**Legal obligations to identify unaccompanied or separated children**

37. In *D.D. v. Spain* (No. 4/2016) the Committee clearly held that States are required “to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border”. Failing to do so before refusing entry would violate the best interest of the child (Article 3) and the right to liberty and freedom from torture (Article 37). As best interest assessments require access to territory, access constitutes a prerequisite to the initial assessment process by the authorities.

38. Additionally, the pushback of unaccompanied children is a violation of the right to special protection for children without families as stipulated by Article 20 CRC. Therefore, the Croatian authorities' systematic use of pushbacks, which by design deny children access to the territory of Croatia and therefore an assessment of their best interest, their identification as unaccompanied and/or separated child and access to protection systems, *ipso facto* violates Articles 3, 9 and 20 of the CRC.

1. **Procedural Issues: Pushbacks and the Lack of a Croatian Database on Unaccompanied Minors**

**Article 3 CRC:** Article 3 of the Convention of the Rights of the Child.

**Article 20 CRC:** Article 20 of the Convention of the Rights of the Child.

**Article 22 CRC:** Article 22 of the Convention of the Rights of the Child.

**Article 6 CRC:** Article 6 of the Convention of the Rights of the Child

**Article 37 CRC:** Article 37 of the Convention of the Rights of the Child

39. The prohibition of *non-refoulement* requires a rigorous procedural evaluation of the conditions of return with the Committee highlighting in its General Comment No. 6 that the ‘assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner’.[[38]](#footnote-38) More recently, in *D.D. v. Spain* (No. 4/2016), the Committee articulated that the principle of *non-refoulement* in regards to children requires States pay particular attention to the assessment of the risk and irreparable harm that child might experience if transferred or returned. The Committee emphasised that the child, no matter the documentation or lack of it, must have access to the territory and “be referred to the authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards”.

40. Moreover, due to the specific vulnerability of children and accompanied children who are migrating, the role of the CRC and the principle of the best interest of the child is to ensure full enjoyment of rights defined by the CRC but also rights defined in the Convention relating to the Status of Refugees which can only be achieved through access to procedure and protection systems.

41. Likewise, the best interests of the child, regardless of refugee status, requires States to undertake a careful investigation into the facts and circumstances of each child and family, which similarly requires procedural guarantees.

42. It is common for Croatian police, without referral to appropriate procedures, to deny the ages of children. For example, in 2019 a testimony recorded by BVMN detailed how the “respondent was taken to the police station in Rijeka (HR). At the police station the respondent was asked for his personal information and when asked for his age he said, “I am 17.” The Croatian officer responded, “You are not a minor.” The respondent expressed intent for asylum but was told no”.[[39]](#footnote-39) Such an example demonstrates the Croatian authorities routine blocking of access to proper assessment systems and the obfuscation of procedure, as defined by law.

43. Furthermore, the collective manner of carrying out pushbacks shows a deep disregard of Croatian authorities to such fundamental obligation. Moreover, the illegality of such practices towards children lays also in failing to take into account the best interest of the child, family life, and the state of health – requirements to meet the threshold of returns.[[40]](#footnote-40)

44. BVMN argues that any return or rejection of entry of an unaccompanied child must be done in cooperation with bodies whose role is protecting children, all the circumstances must be assessed, and the authorities must be sure that they are acting in the best interest of the child. This is especially so when a child is detained. Such a sentiment is reflected in Article 37(d) of the CRC which stipulates that, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance”.

45. Moreover, the lack of an official database of unaccompanied minors hinders the Croatian state’s ability to uphold its obligations. In 2014 the UN Committee on the Rights of the Child in their report on Croatia recommended the creation of a single central database for unaccompanied children.[[41]](#footnote-41) In 2021, the lack of such a database shows willful neglect of the state towards unaccompanied children and their protection, hindering children’s access to basic human rights and a disregard for the essential procedures that protect their rights. As highlighted by the Croatian Ombudsperson for Children: “It is necessary to make records that will contain information on unaccompanied children who have tried to enter the Republic of Croatia and who have been granted access to the territory and denied entry, as well as the reason for the refusal, information on the legal status, the procedures carried out under the Protocol, the return to the country of origin or country of entry in the Republic of Croatia, the missing children, the appointment of a guardian and placement, health care and inclusion in education, and others relevant files”.[[42]](#footnote-42)

1. **Recommendations**

1. BVMN urges the Croatian authorities to immediately carry out an independent and thorough investigation into the illegal and violent pushbacks and hold accountable and sanction all those responsible.

2. In line with the Committee in *D.D. v. Spain* and with Croatia’s obligation to take the best interest of the child as the primary consideration (Article 3), BVMN recommends that the Croatian authorities grant children safe access to the territory of Croatia and additionally provide suitable and age appropriate assessment procedures.

3. BVMN further recommends that Croatia must provide all children, whether with families, separated or unaccompanied, prompt access to legal and other appropriate assistance, including access to NGOs.

4. BVMN asserts that Croatia must respect the right to family unity and identify unaccompanied and separated children through age appropriate procedures within a timely manner.

5. BVMN recommends that the State party introduce specific laws or administrative regulations or directives that provide special procedures and address special needs of unaccompanied asylum-seeking and refugee children, and in particular ensure that these children have proper accommodation.

1. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [Accessed 30 April 2021] [↑](#footnote-ref-1)
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