

**Human Rights Council****Fiftieth session**

13 June–8 July 2022

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Human rights violations at international borders: trends,  
prevention and accountability****Report of the Special Rapporteur on the human rights of migrants,  
Felipe González Morales***Summary*

The present report, submitted in accordance with Human Rights Council resolution 43/6, provides an account of the activities of the Special Rapporteur on the human rights of migrants, Felipe González Morales, since the submission of his report to the General Assembly at its seventy-sixth session.<sup>1</sup> It also provides a thematic study on human rights violations at international borders, focusing on trends, prevention and accountability.

As a follow-up to his previous report to the Human Rights Council,<sup>2</sup> in the present report, the Special Rapporteur examines recent developments in migration and border governance affecting the human rights of migrants. He analyses the regrettable trend of the legitimization of pushback practices through the introduction of legislation and government executive orders and discusses the application of safe third country concepts and readmission agreements at land borders and at sea. The report also takes note of recent positive developments with regard to ensuring accountability for pushbacks.

The Special Rapporteur concludes that pushbacks remain the de facto general policy in many States and continue to seriously impede the enjoyment of the human rights of migrants who cross international borders.

<sup>1</sup> [A/76/257](#).

<sup>2</sup> [A/HRC/47/30](#).



## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 43/6. It contains information on the activities of the Special Rapporteur on the human rights of migrants since the submission of his report to the General Assembly at its seventy-sixth session.<sup>3</sup> The thematic section of the report contains a study on recent migration and border governance developments impacting on the human rights of migrants, as well as examples that illustrate effective ways to prevent human rights violations at international borders. Through the study, the Special Rapporteur aims to provide further information to the Council on his work to address the human rights impact of pushbacks of migrants on land and at sea,<sup>4</sup> with a particular emphasis on trends, prevention and accountability.

## II. Activities of the Special Rapporteur

### Country visits

2. The Special Rapporteur requested an invitation to conduct an official visit to the border area between Belarus and Poland in December 2021. While Poland accepted the visit request, the Special Rapporteur regrets not having received any response from Belarus. Given the lack of response from Belarus and the global sanitation situation in December 2021, the Special Rapporteur decided to postpone the visit.

### Other activities

3. On 12 July 2021, the Special Rapporteur delivered a presentation at a seminar organized by Conectas Direitos Humanos about the impact of Brazilian migration policies on the Venezuelan mobility, and participated at a University Diego Portales conference on collective expulsions of migrants in Chile.

4. On 27 August 2021, the Special Rapporteur participated in the multi-stakeholder consultation of the African Regional Review of the Global Compact for Safe, Orderly and Regular Migration.

5. On 1 September 2021, the Special Rapporteur participated in the African Regional Review of the Global Compact for Migration. On 7 September, he delivered a keynote speech at a conference organized by the Inter-American Association of Public Defenders on the situation of migrants during the pandemic. On 15 September, he spoke at a conference organized by the Association for Women's Rights in Development and the Universal Rights Group. On 20 September, he participated in a webinar held by Anti-Slavery International on climate change, migration and modern slavery.

6. On 23 September 2021, the Special Rapporteur participated in a workshop convened by the Special Rapporteur on violence against women, its causes and consequences. On 28 September, he exchanged views with members of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families during a regular session of the Committee. On 29 September, he was the keynote speaker at a seminar entitled "Pushing-back the right to protection?", organized by Carlos III University of Madrid, Complutense University of Madrid and *European Law Open*.

7. On 1 October 2021, the Special Rapporteur gave a lecture on deportations for a course organized by Franciscans International. On 7 October, he delivered a presentation at an event launching the general comment of the Committee on Migrant Workers on migrants' rights to liberty, freedom from arbitrary detention and their connection with other human rights. From 12 to 14 October, he participated in the Economic Community of West African States consultation on the Global Compact for Migration. On 18 October, he gave an inaugural lecture on current trends in international migration at the International Institute of Humanitarian Law in San Remo, Italy.

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<sup>3</sup> A/76/257.

<sup>4</sup> A/HRC/47/30.

8. On 18 October 2021, the Special Rapporteur presented his report on the impact of the coronavirus disease (COVID-19) on the human rights of migrants<sup>5</sup> to the General Assembly. On 27 October, he spoke at the inauguration of the Sir Dawda Kairaba Jawara Human Rights Moot Court Competition organized by the University of Gambia. On 28 October, he delivered a presentation at a Conference on access to justice for migrants convened by the Inter-American Association of Public Defenders and the Regional Programme for social cohesion in Latin America (EUROsociAL).
9. On 10 November 2021, the Special Rapporteur attended a virtual consultation on human rights issues facing migrant women held by the Asia Pacific Forum on Women, Law and Development. On 11 November, he was the keynote speaker at a webinar organized by Instituto de Defensa Legal (Peru) about the pandemic and the human rights of migrants. On 15 November, he participated in a consultation organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) on protecting and promoting the rights of migrant women human rights defenders and attended a high-level panel event on “Closing data gaps on children on the move: a shared responsibility”, convened by the United Nations Children’s Fund (UNICEF).
10. On 17 November 2021, the Special Rapporteur attended the second international forum on judicial innovation, held by Friedrich Naumann Foundation and México Evalúa, on access to justice for migrants. On 19 November, he participated in a Facebook Live event connected with the award for judicial decisions on migration in the Americas, organized by the International Organization for Migration (IOM) Mexico office and Sin Fronteras.
11. On 24 November 2021, at the invitation of the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe, the Special Rapporteur exchanged views with members of the Committee on illegal measures of migration management with regard to pushbacks on land and sea. On the same day, he delivered a keynote speech on the topic of “Migration and the Criminal System: Specialized Legal Defence in Northern Chile” at a conference organized by the Public Criminal Defender Service of Chile.
12. On 2 December 2021, the Special Rapporteur was the keynote speaker at a conference on COVID-19 and migration held by the Polish and the Norwegian institutes of international affairs. On 8 December, he delivered a presentation on the protection of the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children, at a panel discussion of the Commission on Crime Prevention and Criminal Justice organized by the United Nations Office on Drugs and Crime (UNODC). On 9 December, he attended the annual meeting of the United Nations Network on Migration. On 10 December, on the occasion of Human Rights Day, he delivered a presentation about the pandemic and the human rights of migrants held by the University of Poznan (Poland) and another one on migration and human rights organized by the Latin American Faculty of Social Sciences (FLACSO) Guatemala. On 14 December, he attended a meeting of the Steering Committee of the United Nations multi-partner trust fund to support the Global Compact for Safe, Orderly and Regular Migration. On 21 December, he participated in a virtual consultation on return, reintegration and socioeconomic inclusion held in Thailand by the Global Alliance Against Traffic in Women.
13. On 11 January 2022, the Special Rapporteur had an exchange with the Director of the Fundamental Rights Office of the European Border and Coast Guard Agency (Frontex) and his staff. On 26 January, he participated in a webinar on saving lives, managing borders, alternatives to detention, dignified return and reintegration and other objectives of the Global Compact for Migration in preparation for the International Migration Review Forum.
14. On 17 February 2022, the Special Rapporteur participated in a webinar on the New Pact on Immigration and Asylum, organized by the non-profit alliance, Red Acoge, at the Congress of Deputies of Spain. On 21 February, he delivered a presentation at an intersessional panel discussion on the human rights of migrants in vulnerable situations convened by the Office of the United Nations High Commissioner for Human Rights (OHCHR)
15. On 22 February 2022, at the invitation of the Chamber of Representatives of the federal Government of Belgium, the Special Rapporteur gave a presentation on a draft

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<sup>5</sup> A/76/257.

resolution on combating pushbacks at the external borders of the European Union. On 25 February, he delivered a presentation on migration and human rights at the University of Coimbra. On 28 February, he was the keynote speaker at the inauguration of the seventh course on international migration law of the Institute of International Humanitarian Law.

16. On 9 March 2022, the Special Rapporteur spoke at the annual full-day meeting on the rights of the child held by the Human Rights Council, organized on the theme of the rights of the child and family reunification. On 14 March, he delivered a speech at a side event to the sixty-sixth session of the Commission on the Status of Women on the topic of combating violence and harassment in the context of migration, gender and labour. On 17 March, he spoke about foreign nationals on death row at a side event to the sixty-fifth session of the Commission on Narcotic Drugs organized by Harm Reduction International.

17. On 24 March 2022, the Special Rapporteur gave a lecture at the College of Europe about migration and human rights. On 28 March, he participated in a session of the Committee on Migrant Workers. On 29 March, he gave the inaugural speech at an event held in Argentina by the Global Alliance Against Traffic in Women to launch a series of investigations in the area of gender, migration and work.

### **III. Study on human rights violations at international borders: trends, prevention and accountability**

#### **A. Introduction**

18. Pursuant to Human Rights Council resolution 43/6, the Special Rapporteur on the human rights of migrants is mandated to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation. In carrying out his mandate, the Special Rapporteur has decided to dedicate his report to the Council at its fiftieth session to a study of recent developments in migration and border governance that impact migrants' enjoyment of their human rights. In that context, he also seeks to provide Member States with examples of ways to prevent and address human rights violations at international borders, including recommendations, guidance, case law and legal opinions developed by national and regional bodies and courts to provide victims with effective access to justice and to ensure accountability. The Special Rapporteur is grateful for the observations and information submitted by a wide array of stakeholders in response to his call for inputs to the report.<sup>6</sup>

19. In his report to the Human Rights Council at its forty-seventh session,<sup>7</sup> the Special Rapporteur urged Member States to put an end to pushback practices,<sup>8</sup> to respect fully the prohibition of collective expulsion and to uphold the principle of non-refoulement. Furthermore, he provided a set of recommendations for the development of a human rights-based, gender-responsive, age- and child-sensitive approach to migration and border governance. The Special Rapporteur encourages the further cooperation of Member States with his mandate in this area to ensure that the human rights of migrants, including those in irregular situations, are always the first consideration.

#### **B. Recent developments in migration and border governance affecting the human rights of migrants**

##### **1. Promising practices to protect lives and ensure life-saving assistance at international borders**

20. The Special Rapporteur commends the immediate assistance provided by European countries, and especially neighbouring countries, in response to the sudden and

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<sup>6</sup> Submissions are available at: <https://www.ohchr.org/en/calls-for-input/calls-input/report-human-rights-violations-international-borders-trends-prevention>.

<sup>7</sup> A/HRC/47/30.

<sup>8</sup> For a definition of such practices, see *ibid.*, paras. 34–38.

unprecedented arrival of refugees fleeing Ukraine. At the time of submission of the present report, at least 4.3<sup>9</sup> million refugees have fled Ukraine since the Russian Federation invaded the country on 24 February 2022. In early March, European Union member States agreed to activate Council Directive 2001/55/EC of 20 July 2001, for the first time, in order to respond to the needs of those displaced in a coordinated manner.<sup>10</sup> The Special Rapporteur welcomes this initiative and expresses appreciation also to host countries that are not members of the European Union for announcing solidarity measures that facilitate the immediate and safe reception of thousands of refugees fleeing Ukraine.<sup>11</sup>

21. The Special Rapporteur recalls States' commitments to protecting lives and to cooperating internationally to respond to the needs and rights of migrants, including refugees who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights.<sup>12</sup> He stresses that efforts to respond to the humanitarian emergency should be carried out in full respect of the fundamental rights and freedoms of all persons affected by armed conflict, regardless of race, ethnicity, nationality or migration status, and without discrimination of any kind.<sup>13</sup>

22. The Special Rapporteur also takes note of promising practices in providing emergency resettlement to Afghan nationals, following the Taliban takeover of the administration of Afghanistan in mid-2021. Fifteen European Union member States agreed to help close to 40,000 Afghan refugees by providing a safe journey to the European Union as well as resettlement and humanitarian admission.<sup>14</sup> Since September 2021, Brazil has also opened up new opportunities for the granting of humanitarian visas and residency permits to persons fleeing conflict and environmental disaster, particularly from Afghanistan and Haiti.<sup>15</sup> Over 300 visas had been issued by Brazil to persons fleeing Afghanistan as of December 2021.<sup>16</sup>

23. In addition, the Special Rapporteur notes with appreciation national proposals aimed at combating pushbacks at the external borders of the European Union.<sup>17</sup>

## **2. Ongoing concerns about the exacerbation of situations of vulnerability for migrants at international borders**

24. However, the Special Rapporteur remains concerned at the extent of preventable loss of life and human suffering at international borders, both on land and at sea, which have been reported from across the globe, and bear witness to the effects of the continuing spread of dehumanizing border governance tactics, including the use of new and emerging technologies at borders without adequate risk assessment and relevant safeguards.<sup>18</sup> These tactics also rely on militarized borders, extraterritorial border control and deterrence measures.<sup>19</sup> Pushbacks, expedited return procedures, limited access to asylum and other human rights protections, lack of State-led humanitarian assistance, and the criminalization of irregularly arriving migrants – as well as human rights defenders – increase the

<sup>9</sup> See Office of the United Nations High Commissioner for Refugees (UNHCR), “Ukraine Refugee Situation”, Operational Data Portal.

<sup>10</sup> See <https://www.consilium.europa.eu/en/meetings/jha/2022/03/03-04/>.

<sup>11</sup> See, e. g., the announcement of Canada on 3 March 2022, available at <https://www.canada.ca/en/immigration-refugees-citizenship/news/2022/03/canada-to-welcome-those-fleeing-the-war-in-ukraine.html>; details on the response of the Republic of Moldova, available at <https://data2.unhcr.org/fr/documents/details/91445>; the announcement of Norway on 4 March 2022, available at <https://www.regjeringen.no/en/aktuelt/temporary-collective-protection-for-ukrainians/id2903140/>; and the announcement of Switzerland on 7 March 2022, available at <https://www.sem.admin.ch/sem/fr/home/sem/medien/mm.msg-id-87494.html>.

<sup>12</sup> Global Compact for Migration, para. 23.

<sup>13</sup> See OHCHR, “Ukraine: UN experts concerned by reports of discrimination against people of African descent at border”, 3 March 2022.

<sup>14</sup> See Ylva Johansson, “The efforts by Member States to help Afghans in need shows #MigrationEU in action”, 13 December 2021, blog post on European Commission website.

<sup>15</sup> See submission by Caritas Brasileira.

<sup>16</sup> See submission No. 2 by the Federal University of Uberlandia.

<sup>17</sup> See <https://www.lachambre.be/FLWB/PDF/55/2277/55K2277001.pdf>.

<sup>18</sup> A/75/590, para. 58, and A/HRC/48/31, para. 59.

<sup>19</sup> See, e.g., submission by Turkey.

vulnerability of people crossing international borders.<sup>20</sup> In 2021, thousands died or went missing in the Mediterranean Sea and the Atlantic Ocean while trying to reach European territory. Hundreds were also reported missing or dead while crossing the land borders between Belarus and Poland, Turkey and Greece, and Mexico and the United States of America, among other borders.<sup>21</sup> The Special Rapporteur raises concern that some border governance measures have instilled hostility and have failed to ensure the safety and dignity of migrants, including by intentionally depriving them of adequate access to humanitarian assistance and the basic means of survival.<sup>22</sup> Pushbacks have resulted in family separation and trauma- and fear-induced health conditions, including post-traumatic stress disorder, depression and anxiety.<sup>23</sup>

25. The absence of adequate State-led search and rescue capacity along maritime migration routes, combined with the obstacles non-State search and rescue operators face, particularly in the Central Mediterranean, have significantly increased the risk of death at sea and disappearances for migrants.<sup>24</sup> Those who are intercepted and returned to the hands of Libyan authorities face torture, ill-treatment, unlawful killings, enforced disappearances, sexual violence, arbitrary arrest, indefinite detention in inhumane conditions and other human rights violations, including, at times, the detention of children with adults.<sup>25</sup>

26. In Greece, Law 4825/2021 of 4 September 2021 imposes limitations and conditions on private and non-governmental organizations (NGOs) willing to engage in search and rescue voluntarily. New terms of cooperation limit the involvement of civilian search and rescue and prescribe registration and authorization with the Hellenic Coast Guard.<sup>26</sup> Currently, organizations may only operate under the orders and instructions of port authorities, and rescuers risk significant fines and imprisonment if they act on their own initiative to save lives.<sup>27</sup> It remains a source of concern that, in Italy, nine new legal proceedings were started against private actors involved in search and rescue in 2021, with ships often prevented from operating through lengthy administrative inspections, and that delays and difficulties in finding a safe port for disembarkation persisted.<sup>28</sup>

### C. Legalization of pushback practices

27. The Special Rapporteur notes with concern the regrettable continuation of a trend to legitimize pushback practices through the introduction of legislation and by means of government executive orders. Several States have recently taken to such tactics as a means to whitewash unlawful practices and to pursue them as general policy, in some cases accompanied by public relations campaigns.

28. The Special Rapporteur reiterates that migrants arriving at international borders, regardless of how they have travelled, and of whether they are part of larger and/or mixed movements, should have access to their human rights, including individualized, prompt examinations of their circumstances, and referral to competent authorities for a full

<sup>20</sup> See statement by Michelle Bachelet, United Nations High Commissioner for Human Rights, of 7 March 2022, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28225&LangID=E>.

<sup>21</sup> See IOM, “Rising Migrant Deaths Top 4,400 This Year: IOM Records More Than 45,000 Since 2014”, 10 December 2021; UNHCR, Operational Data Portal, “Europe – Dead and missing at sea”; and IOM, Missing Migrants Project database.

<sup>22</sup> See, e.g., the submissions by Médecins sans frontières (MSF).

<sup>23</sup> See submissions by Médecins sans frontières and Psychosocial Innovation Network; see also Physicians for Human Rights, “Neither Safety nor Health – How Title 42 Expulsions Harm Health and Violate Rights”, 28 July 2021.

<sup>24</sup> See submission by UNODC. See also OHCHR, “*Lethal Disregard*”: Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea, May 2021.

<sup>25</sup> See statement by Michelle Bachelet of 7 March 2022. See also OHCHR, *Unsafe and Undignified: The Forced Expulsion of Migrants from Libya*, May 2021.

<sup>26</sup> See submission by Greece.

<sup>27</sup> See joint submission by the Hebrew Immigrant Aid Society (HIAS) and HumanRights360.

<sup>28</sup> In total, 59 proceedings were initiated since 2016 by Germany, Greece, Italy, Malta, the Netherlands and Spain. See European Union Agency for Fundamental Rights, “December 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights”. See also the submission by the World Organisation against Torture (OMCT).

evaluation of their human rights protection needs, including access to asylum, in an age-sensitive and gender-responsive manner.<sup>29</sup>

29. The Dominican Republic returned over 44,000 migrants to neighbouring Haiti in 2021, among them hundreds of pregnant women and new mothers.<sup>30</sup> Returns specifically targeting those women, along other measures to prevent irregular migration,<sup>31</sup> were carried out on the basis of a decision adopted by the National Migration Council, which argued that no person representing an “unreasonable financial burden” on the State should be allowed entry.<sup>32</sup> The Special Rapporteur expressed his concerns about this practice through a bilateral communication to the Government<sup>33</sup> and voiced his concerns jointly with the Inter-American Commission on Human Rights and the United Nations country team in the Dominican Republic about these blatantly discriminatory measures, which expose migrant women to serious violations of their right to health, especially to reproductive health.<sup>34</sup>

30. In July 2020, France and the United Kingdom of Great Britain and Northern Ireland signed a “declaration of intent” to “do more to tackle illegally-facilitated Channel crossings by small boats”, and vouched to increase the interception of boats and returns at sea.<sup>35</sup> Since November 2020, an unpublished administrative agreement ensures that additional border police agents are deployed in significant numbers and that they are technologically equipped to carry out those tasks.<sup>36</sup> In July 2021, the two parties reinforced their agreement, and the Government of the United Kingdom committed to invest €62.7 million in 2021/22 “to help France expand its enforcement and technological capabilities”.<sup>37</sup>

31. Simultaneously, in July 2021, the Government of the United Kingdom introduced the Nationality and Borders Bill, which, if passed without any amendments, would impact negatively on the human rights of migrants and asylum seekers arriving in the country. The Bill has been criticized for being fundamentally at odds with the international obligations of the United Kingdom under international human rights law<sup>38</sup> and the Convention relating to the Status of Refugees (1951 Convention), as outlined by UNHCR.<sup>39</sup> At the time of submission of the present report, the Bill is still under review.

32. In Greece, pushbacks at land and sea borders have become de facto general policy. UNHCR has recorded almost 540 separate incidents during the period 2020–2021,<sup>40</sup> involving at least 17,000 people who were reportedly returned by force, informally, to Turkey. The Special Rapporteur is concerned about the significant increase in the number of people prevented from entering Greek territory, as part of the declared strategy of the authorities.<sup>41</sup>

<sup>29</sup> A/HRC/47/30, paras. 43–49.

<sup>30</sup> See submission by CEDES (Centro de Desarrollo Sostenible) and Observación Migratoria y el Desarrollo Social en el Caribe (OBMICA).

<sup>31</sup> See submission by the Dominican Republic.

<sup>32</sup> See statement of 28 September 2021, available at <https://presidencia.gob.do/noticias/gobierno-anuncia-acciones-para-hacer-cumplir-las-normas-migratorias-las-empresas-que> (in Spanish).

<sup>33</sup> See communication DOM 2/2021. All communications mentioned in the present report, and any replies to them, are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>34</sup> See Statement by the Inter-American Commission on Human Rights, 1 December 2021, available at [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/320.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/320.asp); and “Mensaje del Sistema de las Naciones Unidas en República Dominicana”, 16 November 2021, available at <https://dominicanrepublic.un.org/es/158598-comunicado-de-prensa>.

<sup>35</sup> See Government of the United Kingdom, “Priti Patel and new French Interior Minister agree action on Channel crossings”, 12 July 2020; and the submission by the National Consultative Commission of Human Rights (CNCDH) (in French).

<sup>36</sup> See submission by the National Consultative Commission on Human Rights and its opinion titled, “*L’Avis sur la situation des personnes exilées à Calais et Grande Synthe*”, of 11 February 2021.

<sup>37</sup> See Government of the United Kingdom, “UK-France joint statement: next phase of collaboration on tackling illegal migration”, 20 July 2021.

<sup>38</sup> See <https://www.ohchr.org/en/press-releases/2022/03/un-rights-chief-urges-revisions-uk-borders-bill>.

<sup>39</sup> See <https://www.unhcr.org/uk/uk-immigration-and-asylum-plans-some-questions-answered-by-unhcr.html>; <https://www.unhcr.org/61e7f9b44>; and submission by Channel Rescue.

<sup>40</sup> “UNHCR warns of increasing violence and human rights violations at European borders”, 21 February 2022.

<sup>41</sup> See submission by Greece. In March 2022, following an urgent application by civil society on behalf of 30 Syrian refugees who had been pushed back and stranded on an islet in the Meriç/Evros River, the European Court of Human Rights issued a decision on interim measures indicating that Greece

Greece reportedly deterred over 140,000 people from entering the country between April and November 2021, and has announced an extension to a fence in the Evros region.<sup>42</sup> In the Aegean Sea, NGOs have documented at least 147 incidents of the forcible return of 7,000 migrants, including children, to Turkey by the Hellenic Coast Guard, without due process.<sup>43</sup>

## 1. Imposition of state of emergency measures

33. In 2021, state-of-emergency measures were increasingly applied along the external border of the European Union with Belarus, similar to the repeated government orders in Hungary since 2016 to respond to a “crisis situation caused by mass immigration”.<sup>44</sup> The Special Rapporteur notes with concern that the Governments of Latvia, Lithuania and Poland have responded to an increase in migrant arrivals from Belarus by “suspending” non-refoulement obligations, limiting access to protection under international refugee and human rights law and restricting the access of humanitarian actors, civil society, lawyers and journalists to the border areas, while disregarding interim measures issued by the European Court of Human Rights. Additionally, in December 2021, the European Commission published a proposal aimed at supporting Latvia, Lithuania and Poland by establishing a set of emergency measures at external borders. If adopted, the proposal would allow States to apply accelerated border procedures to determine the admissibility of applications and provide simplified return procedures for asylum seekers, while delaying the registration of applications for international protection for up to a month. The proposal would also enable limited provision of only basic material reception conditions.<sup>45</sup>

34. In Latvia, Order No. 518 of 10 August 2021 introduced a state of emergency in some areas along the border and suspended access to asylum and other human rights protections by instructing that applications for refugee or “alternative” status “shall not be accepted by units of the State Border Guard and other institutions located in the territory where the emergency situation has been declared”.<sup>46</sup>

35. Meanwhile, in Lithuania, an order by the Ministry of the Interior allowed the State Border Guard to deny entry and to push back all migrants arriving from Belarus. Subsequent changes to the national law on the legal status of aliens enable the suspension, in exceptional circumstances, of the right to apply for asylum for those who cross the border irregularly.<sup>47</sup> Additional deterrence measures followed in November 2021, when a state of emergency restricting access to the border area for humanitarian aid and media workers was declared, while, in December 2021, the length of immigration detention for asylum seekers was extended to up to one year.<sup>48</sup> In the second half of 2021, approximately 8,000 pushbacks were reportedly carried out.<sup>49</sup>

36. In Poland, two ministerial regulations issued in August 2021 enable the Border Guard to instruct all migrants who have entered Polish territory without authorization to immediately leave the territory, and to return them to the State border, without regard for individual protection needs.<sup>50</sup> Amendments to the Act on Foreigners in October 2021 further simplified the procedure for issuing a decision to expel asylum seekers from Poland and to prohibit re-entry.<sup>51</sup> At the same time, since September 2021, the Government has also taken various steps to restrict access to border territories for human rights and humanitarian actors,

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should not remove the group from its jurisdiction, and should guarantee adequate conditions. The Government reportedly complied with the decision. See <https://www.humanrights360.org/a-positive-outcome-of-the-case-of-the-30-syrian-refugees-confined-on-the-islet-of-evros-river/>.

<sup>42</sup> See submission by Equal Legal Aid.

<sup>43</sup> World Organisation against Torture (OMCT) submission, para. 24.

<sup>44</sup> A/HRC/47/30, para. 80.

<sup>45</sup> 2021/0401(CNS), “Provisional emergency measures for the benefit of Latvia, Lithuania and Poland”.

<sup>46</sup> See submission by Latvia.

<sup>47</sup> See communication LTU 1/2021.

<sup>48</sup> See submission by Sienos Grupė.

<sup>49</sup> Ibid.

<sup>50</sup> See submission by the Helsinki Foundation for Human Rights. For the last five months of 2021, the statistics of the Polish Border Guard indicate that they prevented entry in at least 39,670 instances. In March 2022, the District Court in Bielsk Podlaski reportedly found the pushback of three migrants in August 2021, carried out on the basis of these regulations, unlawful and inhumane. See <https://interwencjaprawna.pl/en/pushbacks-are-inhumane-illegal-and-based-on-illegal-regulation/>.

<sup>51</sup> See submission by the Commissioner for Human Rights of Poland.



lawyers, journalists and other observers by declaring a state of emergency, and by subsequently amending the Act on the Protection of the State Border.<sup>52</sup>

37. The Special Rapporteur is extremely concerned by the accumulated impact of these measures on the human rights of migrants, including refugees arriving at the borders of these States. He has been engaging with concerned States through communications<sup>53</sup> and issued a public statement.<sup>54</sup> The practical implementation of restrictions have reportedly led to the death of at least 19 migrants within the Polish-Belarusian border zone,<sup>55</sup> with many more risking serious illness and injury due to prolonged stays in an inhospitable environment in the forests, without adequate assistance, and exposed to freezing temperatures.<sup>56</sup> Non-governmental organizations have also recorded instances of violence from Lithuanian and Polish border guards during pushbacks, as well as from Belarusian border guards, who forced migrants towards the border.<sup>57</sup> Those summarily returned to Belarus reportedly faced ill-treatment and detention as well as onward removal to countries of origin without an individualized assessment and in breach of the principle of non-refoulement. The shuffling of migrants across the borderline by Belarusian border guards has also led to several cases of family separation.<sup>58</sup>

38. In Slovenia, amendments to the Foreigners Act that came into effect in May 2021 enable the suspension of the right to asylum “in case of a migrant emergency”. In addition, the Special Rapporteur notes with concern that parliament has failed to remedy the malpractice of removing migrants from the country without a return decision.<sup>59</sup>

39. Some countries of destination have argued that their policies are the result of the deliberate encouragement and facilitation of human mobility by other countries for political motives.<sup>60</sup> In this regard, the Special Rapporteur condemns the use of migrants as a political tool in violation of their human rights and, at the same time, reaffirms that, despite those allegations, the right to seek asylum must remain in effect under all circumstances.

## 2. The impact of pandemic-related measures on border and immigration governance

40. As documented by the Special Rapporteur, the public emergency arising from the COVID-19 pandemic has disproportionately impacted on the rights of migrants through border closures and emergency measures.<sup>61</sup> Migrants continued to face restrictions on their rights, including to liberty of movement, when left stranded or stuck at international borders or forced to leave States.

41. Numerous reports indicate the arbitrary and collective expulsion of over 1.6 million migrants from the United States since March 2020, justified on the grounds of the health emergency caused by the pandemic. The expulsion orders are issued on the grounds of Title 42 of the United States Code, enabling immigration authorities to block entry into the United States and to expel non-citizens without adequate procedural protections, and often depriving them of their right to seek asylum and to be protected against refoulement.<sup>62</sup> These policies have been continuously renewed since first enacted by the Trump administration in 2020 and

<sup>52</sup> See Helsinki Foundation for Human Rights submission. In relation to the detention and obstruction of the work of three journalists, the Supreme Court of Poland ruled in January 2022 that such blanket restrictions on staying in the entire area of the border zone were unconstitutional and could not provide legitimate grounds for criminal prosecution. See also OHCHR, “Press briefing notes on Poland/Belarus border”, 21 December 2021.

<sup>53</sup> See communications POL 5/2021 and BLR 7/2021.

<sup>54</sup> See <https://www.ohchr.org/en/press-releases/2021/10/belarus-and-poland-stop-sacrificing-migrant-lives-political-dispute-un>.

<sup>55</sup> See Helsinki Foundation for Human Rights submission.

<sup>56</sup> See statement by the Council of Europe Commissioner for Human Rights, 19 November 2021, available at <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-immediate-access-of-international-and-national-human-rights-actors-and-media-to-poland-s-border-with-belarus-in-order-to-end-hu>.

<sup>57</sup> See Médecins sans frontières submission No. 1.

<sup>58</sup> Ibid.

<sup>59</sup> See submission by the Human Rights Ombudsman of Slovenia and [A/HRC/47/30](#), para. 66.

<sup>60</sup> See submission by Greece and reply by Poland to communication POL 5/2021.

<sup>61</sup> See [A/76/257](#).

<sup>62</sup> See submission by UCLA Law School.

resumed in 2021 under the Biden administration, despite repeated objections by the medical experts of the Centers for Disease Control and Prevention, the national public health agency of the United States.<sup>63</sup> Under Title 42, expulsions are reportedly being carried out over the land border to Mexico, and by deportation flights to Brazil, Colombia, El Salvador, Guatemala, Haiti and Honduras.<sup>64</sup> Expulsions are also carried out in conjunction with other border governance measures: the reinstated Migrant Protection Protocols, also known as the “Remain in Mexico” policy,<sup>65</sup> and the practice of “metering” or limiting the number of asylum seekers processed at official border ports of entry regardless of their protection needs.<sup>66</sup> These measures reportedly disproportionately impact non-white asylum seekers apprehended,<sup>67</sup> and have led to family separation, as parents and caretakers are forced to choose between putting their children at risk in dangerous and inadequate conditions in Mexico or sending them unaccompanied to the United States to seek protection.<sup>68</sup>

42. Promising developments have been reported, such as the recent announcement by the United States in support of the Global Compact for Migration, which would entail the revision and replacement of current border governance policies, which have a severely negative impact on the enjoyment of human rights of migrants, with ones that are in line with the country’s obligations under international law.<sup>69</sup> In particular, the Special Rapporteur urges the implementation of the announcement by the Director of the Centers for Disease Control and Prevention that Title 42 expulsions would stop by 23 May 2022.<sup>70</sup>

43. In November 2021, Canada ended the prohibition on entry between regular border crossing points for the purposes of claiming asylum. Irregularly entering people who were previously directed back to the United States have since been allowed to return to Canada and submit applications.<sup>71</sup>

44. In Mexico, the overwhelming majority of returned migrants have remained without adequate access to legal aid, and to safe and dignified accommodation, health care, employment and education.<sup>72</sup> They have faced widespread immigration detention as well as “chain refoulement”<sup>73</sup> to Guatemala, regardless of their nationality, by law enforcement authorities (the National Guard) and transport providers.<sup>74</sup> Additionally, the National Institute of Immigration has reportedly prevented the entry of tens of thousands of migrants at the country’s airports.<sup>75</sup>

45. In Chile, the closure of land border crossings has been repeatedly prolonged and was still in force as of March 2022. The presidential orders forming the basis of the closure do not provide for exceptions on humanitarian grounds or to seek protection in the country. The closure of land border crossings has also resulted in the irregular entry of thousands of Venezuelan and other migrants through more perilous passes. Reportedly, over 20 people have lost their life while crossing the border since January 2021 alone.<sup>76</sup> Additionally, Law

<sup>63</sup> See submission by Human Rights First.

<sup>64</sup> See submission by University of Pennsylvania Carey Law School.

<sup>65</sup> The current iteration of the Migrant Protection Protocols includes all asylum seekers from the Western Hemisphere, instead of just including asylum seekers from Spanish-speaking countries, which makes the group subject to the policy much larger. See submission by the United Nations Children’s Fund (UNICEF).

<sup>66</sup> A/HRC/47/30, paras. 69–70.

<sup>67</sup> See submission by University of Pennsylvania Carey Law School.

<sup>68</sup> See submissions by Loyola University Chicago School of Law and University of Pennsylvania Carey Law School. See also the submission by Human Rights First; the organization has tracked and recorded publicly available information in relation to over 8,705 reports of kidnappings and other violent attacks against migrants and asylum seekers blocked from entering or expelled to Mexico by the United States.

<sup>69</sup> See statement by Michelle Bachelet of 7 March 2022.

<sup>70</sup> See <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>.

<sup>71</sup> See submission by Canada.

<sup>72</sup> See Franciscans International, submission No. 3.

<sup>73</sup> “Chain refoulement” is the removal of persons to third countries in which they would be at risk of refoulement.

<sup>74</sup> See submission by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (Mexican Commission for the Defence and Promotion of Human Rights).

<sup>75</sup> See submission by Sin Fronteras.

<sup>76</sup> See submission by Movimiento Acción Migrante and Observatorio Ciudadano.

No. 21.325 on Migration and Foreigners, which entered into force in February 2022, has introduced the concept of immediate border returns (“reconducción o devolución inmediata en frontera”) into national law,<sup>77</sup> specifically targeting migrants who enter Chilean territory irregularly.<sup>78</sup> Removals are henceforth to be accompanied by a prohibition on re-entry of at least six months. In practice, as Chile has not received formal agreement on the readmission of these migrants by its neighbours, migrants who are expelled in this way will face increased legal uncertainty and the risk of further human rights violations in the territories to which they are expelled.

46. In some American countries, the regularization of Venezuelan migrants has gained momentum now that temporary measures adopted during the health emergency are expiring. In May 2021, the Government of Colombia began granting 10-year temporary protection status to the 1.7 million Venezuelan refugees and migrants living in the country.<sup>79</sup> In 2021, the Dominican Republic regularized the stay of over 50,000 Venezuelan nationals, representing approximately half of those arriving from that crisis-torn country in recent years.<sup>80</sup> Similarly, the President of Ecuador has announced plans to begin the regularization process for Venezuelans, which could provide a stable legal status for over 450,000 migrants residing in the country.<sup>81</sup>

### 3. Safe third country concepts and practices, and readmission agreements at land borders and at sea

47. The Special Rapporteur welcomes the fact that States are entering into bilateral and multilateral agreements to provide joint responses to displacement and migration-related challenges. However, he is concerned that some States also enable the designation of safe third countries in relation to asylum seekers, to variously expedite admissibility, asylum, and return procedures, instead of providing a transparent, human rights-based response. Such practices are sometimes used as a strategy to bypass human rights obligations or to rubber-stamp migrant removals without individual safeguards.<sup>82</sup> The Special Rapporteur notes with concern that recent initiatives to expand the use of the safe third country concept have resulted in violations of the prohibition of collective expulsions and the principle of non-refoulement, and have led to limitations in accessing fair and efficient asylum and other protection-oriented procedures. As provided in article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013, a country can only be designated as a safe third country when basic conditions relating to the safety and protection of migrants in the country, as well as conditions relating to the applicant, are fulfilled. The Special Rapporteur stresses that the determination of a safe third country should be on a case-by-case basis, allowing an individualized assessment of whether the third country concerned is safe for a particular applicant, and applicants should have the opportunity to challenge whether or not the country is safe for them to be returned to in their particular circumstances.<sup>83</sup>

48. A readmission agreement and protocol between Bosnia and Herzegovina and Pakistan came into force on 23 July 2021, which allows the deportation of nationals of Pakistan, who make up nearly a quarter of all migrants and asylum seekers in Bosnia and Herzegovina, and allows their automatic readmission in Pakistan without an individualized assessment.<sup>84</sup> The Special Rapporteur stresses that any return under this agreement should be undertaken with necessary safeguards.

49. In March 2021, the Constitutional Court of Croatia ruled that the assessment of a country as “safe” in relation to asylum applicants should not only rely on normative frameworks and statistical data, but also take into account “relevant reports by bodies concerned with the protection of refugees and NGOs in order to determine the real treatment

<sup>77</sup> See submission by Chile. See also Law No. 21.325, art. 131, available at: <https://www.bcn.cl/leychile/navegar?idNorma=1158549>.

<sup>78</sup> See submissions by Chile and Franciscans International (No. 1).

<sup>79</sup> [A/76/257](#), para. 63.

<sup>80</sup> See joint submission by CEDESO and OBMICA.

<sup>81</sup> See <https://presidenciave.com/internacional/presidente-de-ecuador-guillermo-lasso-anuncio-plan-para-regularizar-a-450-000-venezolanos/>.

<sup>82</sup> [A/HRC/47/30](#), paras. 63–66.

<sup>83</sup> See UNHCR, “Legal Considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries”, April 2018.

<sup>84</sup> See submission No. 1 by Save the Children.

of persons”.<sup>85</sup> Nevertheless, Croatia has continued to remove asylum seekers to Bosnia and Herzegovina and Serbia, both informally and as part of bilateral readmission agreements concluded with its neighbours.<sup>86</sup> Migrants in the Balkans and Central Eastern Europe continued to face widespread pushback and chain pushback practices at most borders,<sup>87</sup> including at the borders between Hungary and Serbia, Romania and Serbia, Serbia and North Macedonia, and North Macedonia and Greece.<sup>88</sup>

50. In March 2020, Cyprus signed an agreement with Lebanon to legalize “turn-backs” of migrants trying to reach the island by boat. In some cases, families were reportedly separated after migrants were brought ashore in Cyprus due to medical reasons, while their families were returned to Lebanon.<sup>89</sup>

51. In Estonia, the Act on Granting International Protection regulates safe third country and safe country of origin determinations, and imposes procedural guarantees in law, including the possibility to challenge the designation of a country as “safe” in relation to a particular applicant;<sup>90</sup> however, it is the Police and Border Guard Board that establishes the list of safe third countries, which is not available to the public and hinders oversight.<sup>91</sup>

52. In 2021, the Government of Greece issued two joint ministerial decisions making a series of safe third country designations. Most notably, JMD 42799 of June 2021 designated Turkey as safe for nationals of Afghanistan, Bangladesh, Pakistan, Somalia and the Syrian Arab Republic, who constitute the most populous groups of asylum seekers in Greece. The decision applied retroactively to asylum seekers on Greek territory and resulted in a 126 per cent year-on-year increase in the rejection of asylum applications on admissibility grounds.<sup>92</sup> Across Greece, over 6,400 asylum applications were considered inadmissible based on the safe third country concept – almost half of all applications.<sup>93</sup> The sole exceptions to the rule have been unaccompanied children under the age of 15 and children victims of human trafficking, torture, rape or other forms of severe psychological, physical or sexual violence.<sup>94</sup> Several submissions to the Special Rapporteur indicate that Turkey has not agreed to readmit any asylum seekers from Greece since 2020. Therefore, the designation of Turkey as a safe third country resulted in legal uncertainty for asylum seekers, most of whom will remain in Greece without any legal status or access to any protection and related services and benefits.<sup>95</sup> Additionally, there has been an increase in the detention of rejected asylum seekers; on the island of Kos, which hosts the only pre-removal detention centre in the Eastern Aegean islands, rejected asylum seekers are reportedly automatically detained despite the lack of a prospect of removal.<sup>96</sup>

53. The Special Rapporteur is concerned that in 2021 over 32,000 migrants were forcibly returned to Libya, where they are at risk of extensive abuses and human rights violations by both State and non-State actors, potentially amounting to crimes against humanity.<sup>97</sup> Migrants are allegedly intercepted by the Libyan Coast Guard in the framework of the renewed deal between Italy, the European Union and the Government of Libya to reduce

<sup>85</sup> See submission No. 1 by the Border Violence Monitoring Network.

<sup>86</sup> See Council of Europe, “Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)”, CPT/Inf (2021) 29; and Centre for Peace Studies, “Report on Illegal Expulsions from Croatia in the Context of the Covid-19 Pandemic”, 2022.

<sup>87</sup> See Protecting Rights at Borders, *Doors Wide Shut*, July 2021.

<sup>88</sup> See also submissions by the Border Violence Monitoring Network and by the Macedonian Young Lawyers Association.

<sup>89</sup> See European Council on Refugees and Exiles, 8 October 2021, available at: <https://ecre.org/cyprus-families-separated-by-pushbacks-to-lebanon-cyprus-calls-for-greater-solidarity/>.

<sup>90</sup> Directive 2013/32/EU, art. 38.

<sup>91</sup> See submission by the Chancellor of Justice of Estonia.

<sup>92</sup> See submission by the International Rescue Committee.

<sup>93</sup> *Ibid.*

<sup>94</sup> See submission by Greece.

<sup>95</sup> See, e.g., submissions by Turkey, the Greek Council for Refugees, HumanRights360 and HIAS, and the International Rescue Committee.

<sup>96</sup> See submission by Equal Rights Beyond Borders.

<sup>97</sup> See submission No. 2 by Médecins sans frontières; see also OHCHR, “Libya: Evidence crimes against humanity and war crimes committed since 2016, UN report finds”, 4 October 2021. See also [A/HRC/49/4](#), paras. 45–54.

migrant arrivals to Europe.<sup>98</sup> Frontex has reportedly facilitated these interceptions through drone surveillance and secretive communication practices that prevent private and NGO ships from accessing information regarding boats in distress and undermine their timely and effective involvement in search and rescue.<sup>99</sup> Cases of the Libyan Coast Guard threatening, ill-treating and shooting live ammunition at boats in distress and their passengers have been reported. In October 2021, the Independent Fact-Finding Mission on Libya mandated by the Human Rights Council presented its report to the Council, noting that since the inception of boat pullbacks in the Mediterranean, Libyan authorities had been involved in widespread and systematic, reckless interceptions at sea and in abuses within migrant detention centres. The Mission found that abuses against migrants were evidence of “a State policy encouraging the deterrence of sea crossings, the extortion of migrants in detention, and subjection to violence and discrimination”.<sup>100</sup> It also found that there were “reasonable grounds to believe that acts of murder, enslavement, torture, imprisonment, rape, persecution and other inhumane acts” were being committed against migrants, which might amount to crimes against humanity.<sup>101</sup> The Special Rapporteur reiterates that any agreement with Libyan authorities that involves the take-back of migrants rescued or intercepted at sea should be revoked and European States should provide adequate and efficient search and rescue services in line with international human rights obligations and the laws of the sea.

54. In August 2020, Italy entered into a political agreement with Tunisia to expedite the readmission of Tunisian migrants, returning close to 4,000 people.<sup>102</sup> At the same time, tens of thousands of migrants have been intercepted by the Tunisian Coast Guard.<sup>103</sup>

55. Spain continued to collectively expel migrants to Morocco based on a 1992 bilateral readmission agreement and 2015 legislation enabling “border rejections” of foreign nationals trying to enter Spain irregularly from Morocco.<sup>104</sup> Instances of large-scale collective expulsions, sometimes accompanied by violence, were reported particularly from Ceuta, between May and August 2021, involving thousands of migrants, including at least 45 unaccompanied migrant children.<sup>105</sup> In February 2022, two courts in Ceuta ruled that the returns of children were unlawful, as the authorities had failed to take any action to protect the children’s best interests during the return procedures.<sup>106</sup>

56. Swiss asylum legislation allows the State Secretariat for Migration to issue inadmissibility decisions as a general practice for asylum applicants who can be transferred to a safe third country on the basis of bilateral readmission agreements.<sup>107</sup> The Secretariat revises the list of safe countries every two years; however, the list reportedly still includes States to which the transfer of asylum applicants has been found to breach non-refoulement obligations.<sup>108</sup> The Special Rapporteur notes that the mere ratification of the 1951 Convention or the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) does not provide sufficient evidence of adequate protection from refoulement and other human rights violations in practice, the risks of which should be assessed on an individual basis for each asylum seeker concerned. Transfers by Switzerland have been variously found by the European Court of Human Rights and United Nations human rights treaty bodies to be in breach of the country’s obligations.<sup>109</sup>

<sup>98</sup> See submission by EuroMed Rights. See also [A/HRC/47/30](#), para. 74.

<sup>99</sup> See submission by Sea-Watch.

<sup>100</sup> [A/HRC/48/83](#), para. 60.

<sup>101</sup> *Ibid.*, para. 61.

<sup>102</sup> See submission by EuroMed Rights.

<sup>103</sup> *Ibid.* See also Mixed Migration Centre, “What’s new? Analysing the latest trends on the Central Mediterranean mixed migration route to Italy”, 9 February 2022.

<sup>104</sup> [A/HRC/47/30](#), para. 71. See also submission by Live together – Cepaim foundation.

<sup>105</sup> See submission No. 4 by Save the Children.

<sup>106</sup> *Ibid.*

<sup>107</sup> Asylum Act, art. 31a.

<sup>108</sup> See submission by AsyLex.

<sup>109</sup> See submissions by AsyLex and UNICEF.

## D. Accountability for pushbacks

### 1. Promising developments at national and regional institutions and courts

57. The Special Rapporteur notes some recent and promising developments at national and regional institutions and courts regarding the accountability of State authorities and other actors for pushback practices.

58. In Austria, a provincial administrative court found in July 2021 that pushbacks were being carried out routinely by the Austrian authorities, in breach of the prohibition of refoulement. The court also established that the Slovenian authorities had effectively participated in chain refoulement through the take-back and onward transfer of migrants to Croatia, and subsequently to Bosnia and Herzegovina.<sup>110</sup> The same court also found the Austrian police authorities in violation of their obligations in relation to the unlawful return to Slovenia of a Somali national who had expressed the intention to claim asylum at a local police station in Austria.<sup>111</sup>

59. In Slovenia, justice for chain refoulement has been served in one notable case, in which the Supreme Court sanctioned the pushback of a Cameroonian national, who was unlawfully returned from Slovenia to Croatia, and ultimately to Bosnia and Herzegovina. The Supreme Court ordered the Government of Slovenia to take steps to allow the asylum seeker to re-enter the country and apply for asylum.<sup>112</sup>

60. In July 2021, the European Court of Human Rights found that the swift return to Turkey of a Turkish journalist arrested at the border, who had expressed a wish to seek asylum and his fear of ill-treatment in the context of the 2016 coup d'état attempt, had been in breach of the prohibition of torture. The Court found that Bulgarian border police had failed to provide the applicant with the necessary procedural guarantees, such as the assistance of an interpreter or translator and information about his rights as an asylum seeker.<sup>113</sup>

61. In November 2021, the European Court of Human Rights found that the Croatian authorities had violated the prohibition of collective expulsion of aliens, among other rights violations. The case concerned an Afghan family of 14. The mother and six of her children were pushed back to Serbia by Croatian authorities in November 2017, outside of an official border post, and without an individualized assessment of their circumstances. The pushback ultimately led to the tragic death of one of the children, who was hit by a train while the group walked along a railway track at the border at night-time, following the pushback. In its judgment, the Court made reference to the large number of reports documenting pushbacks by Croatian authorities.<sup>114</sup>

62. In the case *Shazad v. Hungary*,<sup>115</sup> the Court again found a violation of the prohibition of collective expulsion during the pushback of an individual to the external side of a Hungarian border fence, in the absence of an individualized assessment, without a formal decision being issued, and without the possibility to exercise the right to an effective remedy against removal. The Court also established that countries like Hungary, with an external Schengen border, were required to make available “genuine and effective access to means of legal entry”, in particular border procedures for those who arrived at the border.

<sup>110</sup> See Regional Administrative Court of Styria, Judgment LVwG 20.3-2725/2020-86 of 1 July 2021, available at [http://asyl.at/files/514/3\\_000686\\_jv\\_sig\\_xx.pdf](http://asyl.at/files/514/3_000686_jv_sig_xx.pdf) (in German).

<sup>111</sup> Asylkoordination Österreich, “Schutzansuchen von verfolgtem minderjährigem Somali ignoriert” (Protection requests from persecuted Somali minor ignored), available at: <https://www.asyl.at/de/info/presseaussendungen/gerichtbestaetigtillegalenpush-back/>.

<sup>112</sup> See submission by the Human Rights Ombudsman of Slovenia. See also Supreme Court Judgment I Up 23/2021 of 9 April 2021, available at: [http://sodnapraksa.si/?q=VS00045236&database\[SOVS\]=SOVS&\\_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=201508111448095](http://sodnapraksa.si/?q=VS00045236&database[SOVS]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=201508111448095) (in Slovenian).

<sup>113</sup> See *D v. Bulgaria*, application No. 29447/17, Judgment of 20 July 2021, available (in French only) at <https://hudoc.echr.coe.int/eng?i=001-211366>.

<sup>114</sup> See *M. H. v. Croatia*, applications Nos. 15670/18 and 43115/18, Judgment of 18 November 2021.

<sup>115</sup> Application No. 12625/17, Judgment of 8 July 2021.

63. In *D. A. v. Poland*,<sup>116</sup> the Court ruled that Poland had unlawfully pushed back Syrian nationals at the border between Poland and Belarus, and had repeatedly denied them the possibility to lodge applications for international protection. It further held that the situation of the applicants was not reviewed individually, and that the Polish authorities returned them to Belarus despite the Court's interim measure indicating that they should not be removed. Poland was therefore found to have violated the prohibition of torture and inhuman or degrading treatment, and the prohibition of collective expulsion; the authorities had not provided access to effective remedy to challenge the pushbacks, and had hindered the exercise of the right of application by not complying with the Court's interim measure. The Court's case law has already established that at the time of the pushbacks, the authorities had employed a "wider policy of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning those persons to Belarus, in violation of domestic and international law".<sup>117</sup>

64. In May 2021, the Administrative Court of Munich declared the bilateral agreement between Germany and Greece, which allows the immediate return of asylum applicants from the German border with Austria to Greece, "clearly unlawful" and in breach of European law.<sup>118</sup> Since 2018, dozens of asylum seekers have been affected by the agreement, as German police authorities sought to fast-track the return of those who had already applied for protection in Greece, failing to individually assess the risk of refoulement and other human rights violations or to take into account systemic deficiencies in the Greek asylum system.<sup>119</sup>

65. The Special Rapporteur stands firmly by the assessment that Libya cannot be considered a safe port of disembarkation for migrants rescued in the Mediterranean Sea.<sup>120</sup> He welcomes the accountability achieved in criminal proceedings in Italy in 2021, in which a shipmaster of an Italian merchant vessel was convicted by a court in Naples for disembarking over a hundred migrants in Libya in 2018.<sup>121</sup> He notes, however, that ultimate responsibility lies with States coordinating search and rescue activities in the region to refrain from requesting or authorizing disembarkation in Libya, and that such operations should be suspended without delay.

## 2. Frontex reform

66. Frontex has been facing scrutiny for its operations at the external borders of the European Union. The Special Rapporteur notes that, in October 2021, the European Parliament voted to freeze part of the agency's 2022 budget and to only make it available if Frontex improved its human rights monitoring and financial, recruitment and procurement procedures.<sup>122</sup> The Special Rapporteur welcomes the recent review by the European Ombudsman of the agency's complaints mechanism for alleged breaches of fundamental rights, and the issuance of a decision setting out a series of suggestions to improve the accessibility of the complaints mechanism for potential victims of fundamental rights violations and to strengthen the transparency and accountability of Frontex operations.<sup>123</sup> Additionally, the Special Rapporteur notes that, in May 2021, an action was lodged with the Court of Justice of the European Union on behalf of two asylum-seeking applicants who were subjected to a pushback in the Aegean Sea, which alleges that Frontex bears legal responsibility for failing to terminate its operations in Greece despite "serious, systematic, and widespread" violations of human rights.<sup>124</sup>

<sup>116</sup> Application No. 51246/17, Judgment of 8 July 2021.

<sup>117</sup> See *M. K. v. Poland*, applications Nos. 40503/17, 42902/17 and 43643/17, Judgment of 23 July 2020.

<sup>118</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (Dublin III Regulation).

<sup>119</sup> See Pro Asyl, press release of 5 May 2021, available at: <https://www.proasyl.de/en/pressrelease/deal-between-greece-and-germany-clearly-unlawful/>.

<sup>120</sup> A/HRC/47/30, para. 73, and S/2021/62, para. 107.

<sup>121</sup> See submission by Sea-Watch.

<sup>122</sup> See European Parliament, "EP asks for part of Frontex budget to be frozen until key improvements are made", 21 October 2021.

<sup>123</sup> See European Ombudsman, OI/5/2020/MHZ, 15 June 2021, available at: <https://europa.eu/!kr67tjv>.

<sup>124</sup> See statement by front-LEX of 25 May 2021, available at [https://frontex.files.wordpress.com/2022/01/pr\\_25-may-2021.pdf](https://frontex.files.wordpress.com/2022/01/pr_25-may-2021.pdf).

67. The Special Rapporteur notes the publication of the findings of the European Parliament Frontex scrutiny working group in July 2021,<sup>125</sup> which found that “several reliable actors ... consistently reported about fundamental rights violations at the border in a number of member States, but that Frontex generally disregarded these reports [and] also failed to adequately respond to internal observations about certain cases of probable fundamental rights violations in member States which were raised”. It also concluded that Frontex “did not prevent these violations, nor reduced the risk of future fundamental rights violations”. The Special Rapporteur notes progress made in reforming and expanding the agency’s Fundamental Rights Office, which monitors the compliance of Frontex with its human rights obligations and advises it on human rights. He notes, however, that to date the Office has not yet fully recruited the 40 fundamental rights monitors who should have been in place since December 2020.<sup>126</sup>

### 3. Independent border monitoring mechanisms

68. The Special Rapporteur takes note of some progress made in developing independent border monitoring mechanisms at the regional and national levels. At the national level, there exist some border monitoring mechanisms and more are in the making.<sup>127</sup> He wishes to underline that national human rights institutions and NGOs, often as part of their work to prevent torture, have already developed significant expertise and practice in human rights monitoring, including monitoring methodology.<sup>128</sup> They have an important role in facilitating the cooperation of State and non-State actors and ensuring transparency. The Office of the Public Defender of Georgia, the national authority for the rights of persons detained or deprived of their liberty in Italy, the Commissioner for Human Rights of Poland, and the Human Rights Ombudsman of Slovenia have, for example, carried out long-term monitoring on the basis of established methodology.<sup>129</sup> National human rights institutions in Croatia, France, Greece, Serbia and Slovenia have reported the coordinated publication of their national reports on the rights of migrants at borders; such border monitoring by national human rights institutions is essential for guaranteeing those rights in practice.<sup>130</sup>

69. In the context of the ongoing negotiations on the New Pact on Migration and Asylum, the Special Rapporteur welcomes any support from European Union member States in favour of the establishment of strong and independent national monitoring mechanisms on the human rights of migrants. Such mechanisms should have a wide geographical and procedural application that goes beyond the screening process.<sup>131</sup> It would also be crucial for European Union member States to explore means to ensure such mechanisms are truly independent and have a clear mandate to receive complaints, to investigate alleged violations – recognizing the indispensable role of State institutions in the investigation – and to report publicly on their findings.<sup>132</sup> In addition, efforts should be made to identify practical solutions aimed at avoiding the fragmentation and improving the collaboration of various monitoring bodies at the national, regional and international levels.

<sup>125</sup> See [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf).

<sup>126</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019, arts. 109–110.

<sup>127</sup> See submissions by Croatia and International Rescue Committee.

<sup>128</sup> See Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, “Border police monitoring in the OSCE region: A discussion of the need and basis for human rights monitoring of border police practices”, May 2021.

<sup>129</sup> See submissions by Helsinki Foundation for Human Rights, the Human Rights Ombudsman of Slovenia, the Office of the Public Defender of Georgia and World Organisation against Torture (OMCT).

<sup>130</sup> See European Network of National Human Rights Institutions, <http://ennhri.org/rights-at-borders/>.

<sup>131</sup> See OHCHR, UNHCR and European Network of National Human Rights Institutions, “Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece”, available at <https://europe.ohchr.org/EN/Stories/Pages/National-border-monitoring-mechanism.aspx>.

<sup>132</sup> See OHCHR, “Joint Consultation on Independent National Monitoring Mechanisms proposed in the EU Pact on Migration and Asylum”.



## IV. Conclusions and recommendations

### A. Conclusions

70. The Special Rapporteur concludes, based on an examination of developments since early 2021 in the context of border governance affecting the human rights of migrants, that pushbacks remain de facto general policy in many States and continue to seriously impede the enjoyment of the human rights of migrants who cross international borders. The full spectrum of such violations often remains hidden, due to State-led attempts to dismiss or cover up allegations of wrongdoing. Steps taken to legalize pushbacks in some States are squarely incompatible with the prohibition of collective expulsions and the principle of non-refoulement. Decisions to return migrants to a safe third country on the mere basis of readmission agreements risk violating the prohibition of collective expulsions or the principle of non-refoulement if such decisions do not contain an individualized assessment of the situation and individual protection needs of each migrant.

71. Despite the above, some progress has been made towards preventing systemic human rights violations at borders, and towards fulfilling the rights of migrants who have suffered human rights violations or abuses as a result of border governance measures. Such progress has been primarily achieved through national and regional courts, and has not been followed by resolute changes in government policy and border governance strategies.

72. The Special Rapporteur notes that reports of pushbacks, including accounts by authoritative international and national organizations tasked with preventing torture and ill-treatment, are often dismissed by State authorities and are not investigated promptly, thoroughly and independently. Private search and rescue service providers and humanitarian aid workers are frequently barred from border areas despite the lack of legitimate reasons for such measures, and contrary to the State's basic moral duty to ensure every person's right to life is secured in these, often inhospitable areas. Journalists, civil society organizations and human rights defenders, including those involved in border monitoring, continue to face retribution for their work, and for raising the alarm about deadly and life-threatening border governance practices, including examples of externalization to shift or avoid international protection obligations. The need for the development of truly independent national border monitoring arrangements remains pressing.

73. The Special Rapporteur notes with concern that some States have taken action to provide immunity to law enforcement officers for pushbacks, which may lead to the normalization of abusive and violent border governance tactics and continuing impunity for violations of the human rights of migrants. As shown, if pushbacks become a routine element of border governance there will be severe, long-term consequences for the health and well-being of migrants.

74. The Special Rapporteur is concerned that States continue to employ border governance measures that exacerbate situations of vulnerability, including those based on multiple and intersecting forms of discrimination, such as on the basis of race, ethnicity, nationality and migration status. All efforts should be directed at ensuring that migrants are not criminalized, punished or discriminated against simply for migrating.

75. The Special Rapporteur reiterates his support for the development of effective independent monitoring mechanisms in national law and at the European Union level through the pending New Pact on Migration and Asylum. He stresses that the involvement of expert organizations in the development and delivery of border monitoring is fundamental to ensure the independence and efficiency of those processes and to improve access to justice and accountability for violations of the human rights of migrants at borders. He calls upon States to promote the inclusion of national human rights institutions and a wide spectrum of civil society actors to ensure the legitimacy and accessibility of border monitoring.

## B. Recommendations

76. The Special Rapporteur reiterates his call upon States and all relevant stakeholders to make use of the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders.

77. The Special Rapporteur stresses that States should increase their efforts to develop a human rights-based, gender-responsive, age- and child-sensitive approach to migration and border governance that ensures that the human rights of migrants, including those in irregular situations, are always the first consideration.

78. The Special Rapporteur urges Member States to put an end to pushback practices, to suspend, cancel and revoke, as necessary, initiatives to legalize pushbacks, and to respect fully the prohibition of collective expulsion and uphold the principle of non-refoulement.

79. The Special Rapporteur reminds States of their duty to provide prompt, adequate and effective search and rescue services for migrants in distress on land and at sea. Life-saving assistance should be a fundamental element of national border governance strategies to protect the lives of people crossing international borders and prevent migrant deaths and injuries. Any search and rescue unit receiving information about a distress incident should take immediate action if in a position to assist.

80. The Special Rapporteur calls on States not to impose any penalty or restriction on search and rescue services and life-saving humanitarian assistance taken by civil society organizations and other private actors on land and at sea, nor to render their work more difficult through the imposition of bureaucratic obstacles. In the context of search and rescue at sea, States should designate truly safe ports of disembarkation.

81. The Special Rapporteur urges States to refrain from entering into international agreements that would result in human rights violations; to suspend, cancel and revoke, as necessary, bilateral and multilateral return and readmission agreements, including those based on the safe third country concept, which risk violating the prohibition of collective expulsion and the principle of non-refoulement. States should ensure that any such agreement fully respects procedural guarantees to provide an individualized assessment on whether the third country concerned is safe for each migrant subject to return and readmission, and migrant applicants must have the opportunity to challenge whether that country is safe or not in their particular circumstances, so that it does not lead to violations of the human rights of returned migrants. The Special Rapporteur reiterates his call on States to establish effective independent monitoring mechanisms. He notes that arrangements should ensure that monitoring mechanisms are allowed access to all migration-related facilities and procedures to monitor their compliance with international human rights laws and standards, building on best practices and monitoring methodologies. The participation of civil society organizations without obstacles should be encouraged, and civil society monitors should be protected from threats or retribution for their involvement in independent border monitoring.

82. The Special Rapporteur encourages Member States to seize the opportunity of the first International Migration Review Forum and renew their commitments relating to border management, saving lives and preventing migrant deaths and injuries, and facilitating safe and dignified return and readmission, inter alia, as contained in the Global Compact for Migration.