



Border Violence Monitoring Network

**A VIOLENCE REPORTER'S GUIDE TO
IDENTIFYING & DOCUMENTING
CASES OF TORTURE**



**Border Violence
Monitoring Network**

**A VIOLENCE REPORTER'S GUIDE TO
IDENTIFYING & DOCUMENTING
CASES OF TORTURE**

March 2023

Editors: Alexandra Bogos, Gigi Aulsebrook

Authors: Alina Ó Riada, Annie Lovisetto, Natalie Smith

This publication has been supported by the United Nations
Voluntary Fund for Victims of Torture

TABLE OF CONTENTS

0. Preface	4
0.1. Why has this report been written?	4
0.2. Why should I investigate whether a person on the move has been tortured or ill-treated?	5
0.3. Why should a person on the move report incidents of torture or ill-treatment?	6
Section One: Definitions for torture and other cruel, inhuman or degrading treatment	7
1.1. Definitions	7
1.2. Who has official authority?	9
1.2.1. More details on private actors	9
1.3. Contributing Factors to the Definition of Severe?	10
1.3.1. Age	10
1.3.2. Sex, gender identity and LGBTQIA+	11
1.3.3. Religion	11
1.3.4. Disability and other vulnerabilities	12
1.4. What was the purpose of the ill-treatment?	12
1.5. Was the ill-treatment intentional?	13
1.6. Cruel, inhuman or degrading treatment	13
1.6.1. Degrading treatment	14
Section Two: Which forms of violence frequently used during pushbacks constitute or amount to torture or other cruel, inhuman, and degrading treatment?	15
2.1. Excessive and Disproportionate Use of Force	15
2.2. Electric Discharge Weapons (EDWs)	15
2.3. Forced Undressing	16
2.4. Threats or Violence with a Firearm	16
2.5. Inhuman Treatment Inside a Police Vehicle	17
2.6. Inhuman Treatment Inside a Detention Facility	17
Section Three: How to document and report incidents of torture or ill-treatment?	18
3.1. Example Question Guidelines	18
3.1.1. Who...	19
3.1.2. What...	19
3.1.3. Where...	20
3.1.4. When...	20
3.2. Interviewing and approach methodology: DOs and DON'Ts	21
3.2.1. DOs	22
3.2.2. DON'Ts	23
3.2.3. Verifying testimonies	23
3.2.4. Assumptions	24
3.2.5. Date and Time	24
3.2.6. Location data	24
3.2.7. FRONTEx	25
3.2.8. After the Report	25
3.3. Supporting Evidence	26
3.4. Volunteer mental health	26
Section Four: Legal Appendix	28
4.1. International	28
4.2. European	28
Section Five: Glossary	30

0.0. A Violence Reporter's Guide to Identifying & Documenting Cases of Torture

The issue of torture and other forms of cruel, inhuman or degrading treatment is a serious and ongoing problem around the world, occurring in many different scenarios. The European Union, despite being a beacon of human rights, has struggled to find an effective solution to address managing its border and has resorted to control through externalisation, pushbacks and border violence. This has resulted in severe human rights violations and acts of torture and ill-treatment towards people on the move.

This toolkit is a response to the growing concern over the mistreatment and abuse of people on the move in the EU. It is aimed at violence reporters who are tasked with the important responsibility of identifying and reporting cases of torture and ill-treatment towards people on the move. It provides definitions, guidelines and best practices for investigating and reporting incidents and includes a legal appendix that outlines the relevant international and European laws, and conventions.

This toolkit is intended to be a resource for violence reporters, journalists, human rights defenders, and other stakeholders who are dedicated and committed to protecting the rights of people on the move. With its concise and straightforward guidance, it is hoped that this toolkit will empower violence reports to effectively document and report incidents of torture and other forms of cruel, inhuman or degrading treatment, and contribute to ending these human rights violations in the EU.

0.1. Why Has This Report Been Written?

Since 2017, BVMN violence reporters collected 1,660 testimonies affecting over 24,990 people, of which 91% included exposure to some form of torture or other cruel, inhuman or degrading treatment. It is crucial that these violations are recorded effectively and thoroughly so that, both now and in the future, fighting for accountability and justice for these abuses is not just an aspiration, but a real possibility.

Moreover, evidence of these crimes must be archived so their existence cannot be denied or ignored. This is made possible through violence reporters communicating with victims of human rights abuses and providing a platform for them to voice their stories in their own words. This responsibility can be overwhelming at times. Equipping violence reporters with an understanding of appropriate legislation, human rights instruments and mechanisms, specifically for those who do not have a background in legal or advocacy work, is an endeavour taken by this toolkit. Recording the data for advocacy purposes and litigation supports the voices of people on the move.

This toolkit is a point of reference for anyone joining the field reporting team. It contains a comprehensive overview of all the essential tools needed for identifying,

collecting and documenting cases of torture or other cruel, inhuman or degrading treatment. It addresses many of the common questions testimony collectors have, provides tips on how to conduct interviews, contains an easy-access legal appendix, and includes guidelines on how to look after your mental health while on the field.

Essentially, the aim of this toolkit is to make identifying cases of torture and other cruel, inhuman or degrading treatment as straightforward as possible so as to produce powerful and thorough testimonies, which in turn will allow a high quality body of evidence to be produced, proving the encroachment of people on the move's rights under national and international law.

0.2. Why Should I Investigate Whether a Person on the Move Has Been Tortured or Ill-Treated?

To achieve redress, accountability and justice, it is important to have accurate information. Violence reporters should strive to be well-informed about various options available to people on the move for reporting violations of their rights. Having this knowledge will help ensure that people on the move have the necessary information to seek remedies for the rights they have violated.

Information and data collected during an investigation into an alleged crime of torture or other cruel, inhumane or degrading treatment can serve as a powerful advocacy tool for persons on the move. Such information can be used to raise awareness and advocate for these issues at both public and legal levels. While this approach has its limitations, successful cases can lead to long-term permanent change, for example, national reforms to improve treatment of persons on the move, further enforcement of laws, or in the least, encourage greater scrutiny of related issues.

Moreover, cases involving alleged crimes of torture or other cruel, inhumane, or degrading treatment can lead to systemic change if brought to bodies such as the European Court of Human Rights (ECtHR) or to UN Committees. Whilst it may be tempting to view the process as difficult and potentially futile, every piece of evidence, data and testimony collected is crucial to advancing human rights cases. Regardless of the result, the efforts put into investigation, documentation and advocacy still hold significance.

Torture is a crime in the legislation of all countries members to the Council of Europe and signatories to the European Convention of Human Rights. Significantly. The crime of torture has no statute of limitations, meaning that the perpetrators can be held responsible and accountable for their actions even years later after the incident. This provides the survivors with opportunities to seek remedies for their ordeal(s), even if they were unable to do so immediately due to whatever reason.

0.3. Why Should a Person on the Move Report Incidents of Torture or Ill-Treatment?

As a violence reporter, if a person on the move has shared with you an incident of violence, it indicates that they are aware that an injustice has been inflicted upon them. If the person expresses a desire to seek redress or hold the responsible party accountable, it is important, as the violence reporter, to document the ill-treatment and inform the person on the move about their available options. This includes informing them of any potential remedies for the harm they have suffered and informing them of their rights and steps they will need to take to seek accountability based on their particular circumstances.

It is important for violence reporters to educate people on the move, without making false promises or creating false hopes, on the potential impact of documenting these incidents of violence and bringing these cases to the attention of official institutions. These actions can create pathways for changes in national legislation and practices or at the level of the European asylum process.

There is a possibility that a claim of torture, cruel, inhuman or degrading treatment can be brought before the UN Human Rights Committee or the European Court of Human Rights. However, it is essential to explain the limitations and those of the laws of the countries. For example, direct asylum in an EU country may not be possible, and a legal case taken up by a counsellor is not guaranteed to succeed. Additionally, many cases are often closed due to a lack of evidence even before reaching the inside of courts. Furthermore, it is important to highlight that these processes can be extremely lengthy and often obtain little immediate relief to the respondent. While this information may seem discouraging, it is important that the respondent understands the realities of the situation to avoid disappointment or false hope. The prohibition of torture is absolute and it does not have exceptions, meaning that no state authority, under any circumstances, can the use

torture, not even during emergencies or war. Because of this, a person can still seek accountability and redress for the torture they have experienced years after the violation took place. The same applies to cruel, inhuman and degrading treatment, although, due to the violations being qualified as less severe, victims might not be able to seek redress later on.

Obtaining consent, specifically informed consent,¹ from the person on the move is crucial for this process. Documenting, recording and litigating the case of a survivor of torture or ill-treatment can be pursued only with the explicit permission of the person. The person may withdraw their consent at any time, which will result in the process of documenting, recording, or litigating a case ending.

1.

DEFINITIONS FOR TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

1.1. Definitions

In order to have the ability to document and record torture or other cruel, inhuman or degrading treatment, we must clarify what these terms mean.

Torture is defined as severe physical or mental pain or suffering which has been intentionally inflicted upon a person. This can be for purposes such as obtaining information from the person, or a third person; obtaining a confession; for the purpose of punishing the person, or a third person; for the purpose of intimidating or coercing the person, or a third person; or for any reason based on discrimination, by official authorities or with their knowledge.

At times, an act of physical or mental pain or suffering may not meet the minimum level of severity or intensity to be considered as an act of torture, or it may not have been perpetrated for the purposes enumerated for "torture." In such cases, it may be considered a **form of cruel, inhuman or degrading treatment**². Both torture and these other classes of actions are prohibited under national, international and EU law (see the Legal Appendix).

Police officers, border guards and other law enforcement officers are allowed to make use of force according to the law: when it is necessary and under specific circumstances, such as in self-defence or in defence of another individual or group. However, the use of force that is not strictly necessary under specific circumstances and is not used in self-defence or to defend others constitutes either torture or cruel, inhuman or degrading treatment. Use of force to prevent people from entering the territory of a state was found not to be considered "lawful, necessary or proportionate and, therefore, may well amount to ill-treatment or even torture" by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.³

Use of force by private security companies must comply with the national laws applicable on the territory on which they are present and active. However, the country where the private security company is registered might also have jurisdiction over certain parts of the work the company does. Private security personnel can make use of force which is reasonable and necessary to deter, neutralise or stop the threat. When an employee for private security uses force, they must be able to explain the reasons for the application of force and how it was reasonable and necessary under the circumstances.⁴

Use of force by private individuals (people not affiliated with a public authority nor with a security company) is regulated by national laws. Using force against another individual is only justified in case of self-defence or self-protection against an

"The police said "Why you ran away?" I said "I was afraid you beat me". And then, they started beating me. They so beat us. One beat me, he was kicking and boxing with gloves to hurt more. Another beat my friend. My friend is so injured in his feet. He was driving so bad and we were so cold. But he said "You ran away, now you are punished."

(BVMN. February 2022. Croatian-Bosnian border)

"[...] They have beaten us the entire time, they kicked us and beat us with batons, and the grip of the pistols". During this time, the respondent explained that the officers were forcing them to "confess" the name of the person they suspected led the group there. "They beat us for 10 to 20 minutes, and they were asking "who is your leader?" We told them we do not have a leader".

(BVMN. July 2022. Croatian-Bosnian border)

attack or threat directed at the person themselves or at another person. Self-defence is an act strictly regulated by the criminal code of individual countries, and the proportionality between the threat or the attack and the use of force must, usually, be assessed by a court of law.

There are several points to consider when trying to determine whether the acts of force amount to torture or ill-treatment:

- ▶ An official authority or a state agent must be directly or indirectly linked to the incident. It is important to note that torture, cruel, inhuman or degrading treatment is never justified, regardless of the victim's conduct or emergency situations such as political instability, war or threat of war. In addition, it is unlawful to return someone to a country where they are at risk of torture (the principle of non-refoulement).
- ▶ States have two types of obligations: to abstain from subjecting people on their territory or under their control, citizens and non-citizens, to torture or ill-treatment, as well as to protect people from being subjected to torture or ill-treatment. The obligation to protect stems from an act of torture or ill-treatment already committed against a person and entails that the state must investigate and document cases of such abuses, as well as denounce, litigate, prosecute and sanction the perpetrators.
- ▶ The state agent must be acting in the exercise of his/her duties, in order to attribute the act of torture to the state. However, a state cannot claim that acts of torture or ill-treatment are outside of its responsibilities, for the state has a duty to investigate such serious crimes. Moreover, a state cannot outsource its responsibility; consequently, if it contracts private companies which perpetrate torture or ill-treatment, the state can still be held responsible. A good example would be the use of private security companies in camps or maritime ports.
- ▶ The suffering caused must be considered "severe." This qualification can often depend on the circumstances of the case and the characteristics of the victim. Depending on the severity of the acts, which can only be properly assessed by a court, a violation could constitute "torture" or "ill-treatment." For torture, the purposive element is relevant, as recognized by the UN Committee Against Torture and the European Court of Human Rights: It must also include the aim, inter alia, of obtaining information or a confession, inflicting punishment or intimidation.
- ▶ Torture and ill-treatment must be intentional. This means that the perpetrator either caused the injury on purpose or was reckless in their actions and reasonably could have foreseen that they could result in such harm.

"Every day was the same. Locked in a room and with only maximum 10-15 minutes to go to the rooftop to smoke a cigarette. This camp is not good. All of this time inside without knowing anything, it's not good for the head. You just think a lot. I stayed for 5 days and I was thinking - I must be going crazy, I will kill someone. This was like a torture, they don't beat us but they lock us up and torture our minds."

(BVMN. November 2021. Croatian-Bosnian border)

"two of the men dressed in a Bulgarian border guard uniforms kicked and slapped us, followed by one word in English: Go."

(BVNM. May 2022. Bulgaria-Turkish border)

"Okey, let's go to the police station' and one of them slapped me in the face and said 'No police station' and hit me with their batons."

(BVMN. March 2022. Croatian-Bosnian border)

They searched us and even touched our sensitive places in front of women."

(BVMN. March 2022. Greek-Turkish border)

1.2. Who Has Official Authority?

Figures with:

- ▷ Governmental power,
 - ▷ Examples: politicians, ministries, departments
- ▷ Institutional power
 - ▷ Example: state-run educational facilities, psychiatric institutions
 - ▷ State bodies and agents such as the police, border police, the military or special forces
- ▷ Quasi-governmental authority where there is no state control
 - ▷ Example: Non-state agents hired by police and other private actors, such as private security companies

In order to determine whether a state is liable for the actions of a private actor, the manner of appointment, the level of supervision, their objectives, powers and functions have to be analysed.

1.2.1. More Details on Private Actors

They can be private individuals or state agents acting in their private capacity.⁵ States are obligated to protect everyone from torture, cruel or other inhuman and degrading treatment within reason. This means that the state's knowledge of the threat of ill-treatment and its capacity and resources to intervene, needs to be analysed.⁶ If state control is lacking, private actors who are determined to exert quasi-governmental power count as official authorities.⁷

For example, the detention administration failing to prevent a detainee's ill-treatment by other inmates has been found to violate Article 3 of the European Convention on Human Rights (ECHR) because this could have been prevented through reasonable measures.

A direct link can be assessed when the official authority was physically present or close by when the acts of torture or ill-treatment occurred, having or giving direct control over what was happening.

An indirect link is when the official authority was not physically present but knew of the violations and either condoned them or did not intervene—in other words, if the official authority was not physically present but knew of the assault and supported its execution. Failure to intervene can also constitute acquiescence to torture (e.g., in *Dzemajl et al v Yugoslavia* police were present at the scene when individuals destroyed a Roma settlement⁸) Failure to intervene may also occur when the acts are perpetrated by private actors and the state fails to investigate and hold the perpetrators accountable.

A state must actively try to prevent anyone from being subject to torture and cruel, inhuman or degrading treatment. The positive obligation of states to prevent torture depends more on their means than the result. If the state reasonably could have taken steps to prevent such violations, then it can be held accountable. It is essential for states to put a legislative and regulatory framework of protection in place. They may be required to implement operational measures to protect certain people who are at risk and must conduct effective investigations of arguable claims if a violation occurred.

1.3. Contributing Factors to the Definition of Severe?

Torture methods can be grouped into three different categories; 1) those of physical nature, such as beating and electric shocks; 2) of a sexual nature, such as rape or sexual humiliation; or 3) of a psychological nature, such as sleep deprivation or prolonged solitary confinement.⁹ The definition can depend on the circumstances of the case and the characteristics of the victim. Additionally, the duration of the treatment and its physical and mental effects on the victim are also factors in determining the severity of the violation and how it is classified.

Torture encompasses both physical and mental suffering; thus, the threat of imminent torture can also fall under the threshold definition of torture. However, the pressure of the threat and the mental suffering caused must be extremely intense. Here you have to look at objective factors such as which torture methods were used as well as subjective factors like the level of fear and pressure the victim experienced while taking into account vulnerabilities.

Ill-treatment has varying effects on different people. The level of severity and qualification of the violation depends on factors such as person's age, sex, religion, state of health, previous experiences and any other vulnerabilities. These should be taken into consideration when evaluating the extent of pain or suffering caused. Some examples of vulnerabilities to consider are elaborated on in the following parts.

1.3.1. Age

Children are considered to be in need of care and protection in national legislations and in the UN and European Conventions. Most states have special protection laws for unaccompanied children. In most legislations, they cannot be detained, they must be placed in the care of a guardian, receive shelter and have access to education. Detaining unaccompanied children is often prohibited and might constitute ill-treatment. Children on the move accompanied by a parent, a guardian or within a family also enjoy the right to special protection. For example they must be detained in places designed for children, to be able to play and spend time in the open air, and have access to psychologists and social workers.

Elderly people often cannot withstand extreme levels of physical activity and can therefore suffer at greater length. Elderly persons over a certain age are considered vulnerable persons and benefit from additional protection measures, such as the prohibition of detention, access to medical care to avoid the onset of illness, and shelter. International human rights instruments such as the United Nations Principles for Older Persons¹⁰ protect the rights of the elderly.

The officers looked at their personal belongings in their bags and threw what they found on the heads of the four young men: it included energy drinks and tuna fish. One officer also used the shaving machine found in one of the men's bags to cut off the hair of one of the group members and the eyebrow of another one. The respondent saw that one of the officers dressed in military clothes took a video while performing the haircut. As the officers found some cigarettes in the bags as well, the respondent told us they forced him to eat two of his own cigarettes. He remembers them telling him: "You eat this cigarette. Eat fast" and then screaming "Eat, eat!"

(BVMN. August 2022.
Hungarian-Serbian border)

"Following that, the officers physically attacked the respondent with their hands, in front of the children"

(BVMN. October 2018.
Croatian-Bosnia border)

"Another group with at least 2 women and 2 children was there too, and the respondent reports the police hit all of them as well."

(BVMN. October 2022."
Hungarian-Serbian border)

"Following that, the officers physically attacked the respondent with their hands, in front of the children"

(BVMN. October 2018.
Croatian-Bosnia border)

1.3.2. Sex, Gender Identity and LGBTQIA+

Women and LGBTQI+ persons are afforded special protection when it comes to detention and body searches. For example, inappropriate body searches by male officers or in the presence of male officers or detainees may constitute degrading treatment, as might intimidating sexual comments. Also, women must always be detained separately from men. National and international human rights instruments protect women from discrimination and abuse, including the UN Convention on the Elimination of Discrimination Against Women (UN CEDAW)¹¹. Under the Convention, asylum seeking women could be recognized as being a part of a particular social group in need of protection due to risk of sex and gender-based violence in their countries of origin or countries of transit (R.S.A.A. v. Denmark, 2019)¹².

"They [the policemen] searched our bodies, also of my wife and my daughter. They [the officers] were touching them and then kept doing it. You know, they were touching my wife everywhere. I said them: 'Please brother, don't touch my wife and daughter, please, don't touch them.' I kept asking them 'Please, don't touch them.' But they told me 'Shut up' and kicked into my legs [covering his eyes with his hands]."

(BVMN. October 2018. Croatian-Bosnian border)

"She feel pain, but police laughing, joking about it." "There was a 5 months pregnant woman in the group that started to feel pain during the drive to the border. However, the police - though made aware of it - did not care about the state of the woman... She feel pain, but the police laughing, joking about it."

(BVMN. April 2022. Croatian-Bosnian border)

1.3.3. Religion

If persons are subjected to humiliation due to their religious beliefs, then the crime can be in its aggravated form. Also, one of the constitutive elements of torture is discrimination. Examples of torture or ill-treatment due to religious beliefs were recorded by BVMN when crosses were spray-painted onto the heads of people on the move at the Croatian borders¹³. BVMN also recorded instances where perpetrators made offensive and discriminatory remarks towards people on the move before pushing them back.

Crucial in this sense is that the person does not have to hold a particular religious belief, nor do they have to practise it if they hold it. The important element is that the perpetrator thinks that the person holds this religious belief and, as a result of that belief, engages in behaviour which violates the person's rights. National and international instruments, including Article 9 of the ECHR and Article 18 of the UN International Covenant on Civil and Political Rights, protect people's rights to hold a belief or religion and practice those beliefs.

"The policeman said: 'Morocco come here I give you a cigarette'. I said 'I cannot take the cigarette; I am doing Ramadan' - then they beat me".

(BVMN. May 2022. Croatian-Bosnian border)

"The police officers said that because the men were from Pakistan, they could not get asylum, and that Muslims were not welcome in Hungary".

(BVMN. February 2018. Hungarian-Serbian border)

As Ramadan was approaching, the respondent was told by camp authorities: 'We will let you fast with Erdogan', clearly intimating the intent of officials to carry out a removal during the fasting period.

(BVMN. 2020. Greek-Turkish border)

1.3.4. Disability and Other Vulnerabilities

The UN Convention on the Rights of Persons with Disabilities protects persons from discrimination and imposes obligations upon states to ensure people with disabilities enjoy the protection of their rights. This applies in cases of detention and access to medical care and includes non-citizens.

Previous injuries and disabilities can escalate actions which would not usually constitute a breach of Article 3 ECHR into crimes of torture, cruel or other inhuman or degrading treatment. For example, the trauma from prior abused can amplify fear and anxiety, causing psychological suffering in survivors of torture in their home country or during transit.

The two respondents describe the transit group as consisting of 42 people including many children. It was mainly families with children. There was one family with five children, and one of them was disabled. The youngest person was a girl of one year, the oldest two persons were 65 years old. The group also included one disabled person with Rheumatism and the respondent herself (mother) has difficulties walking. According to the two respondents, none of the people in the group was wearing a life vest.

(BVMN. June 2022. Greek-Turkish border)

1.4. What Was the Purpose of the Ill-Treatment?

Torture and ill-treatment are never justifiable, under any circumstances. Despite attempts by states to rationalise the use of torture during emergencies, such as incumbent terrorist attacks or at times of war to allegedly extract information from enemy combatants, it remains prohibited. Some law enforcement officials might be under the impression that they can make use of torture or ill-treatment for certain purposes, such as to obtain information or a confession, or as punishment for suspected or committed crimes. The prohibition of torture and ill-treatment is absolute, and those who engage in such practices by law enforcement officials are engaging in serious human rights violations and drawing criminal sanctions for their behaviour.

Equally, if ill-treatment is perpetrated for the purpose of intimidation or coercion, humiliation and discrimination, it is constitutive of torture.

"He told me, 'You did it too much now, you crossed the border to many times, so now we can punish you!'"

(BVMN. January 2022. North Macedonian-Greek border)

During this time, the respondent explained that the officers were forcing them to "confess" the name of the person they suspected led the group there. "They beat us for 10 to 20 minutes, and they were asking "who is your leader?" We told them we do not have a leader".

(BVMN. July 2022. Croatian-Bosnian border)

The respondent recounted that they took everything: phone, money (50 Euros), backpacks, food and water. "They cut my pants with a knife to get where I hid the money and slapped me for that." One of the officers brought a branch and asked the respondent to stretch out his hands and reportedly started beating his outer palm with the baton to punish him for hiding money, about 5 times, each time for 10 seconds. "He was even upset about me having an old phone and started giving me that look, then he broke the phone and smashed it with his foot".

(BVMN. January 2022. Bulgarian-Turkish border)

"The respondent tried to reiterate his intention for asylum, telling the police that he was being persecuted in Iran for his Christian faith. He asked the officers: "Aren't you Christian?", to which they replied: "We hate all of you, doesn't matter if you're Christians, only because you are from the Middle East." After the body searches and theft of possessions, the respondent and the transit group were loaded into a white combi vehicle."

(BVMN. November 2018. Croatian-Bosnian border)

1.5. Was the Ill-Treatment Intentional?

Was it the perpetrator's intention to arouse feelings of fear, anguish, and inferiority or break the victim's physical/moral resistance? Was the act intended to change the victim's position on an issue? Was the pain or suffering caused by accident? Was the pain or suffering caused reasonably foreseeable?

Examples of treatment which have been found to amount to torture:

- ▶ Being stripped naked with arms tied behind their back together and suspended by arms (also known as "Palestinian hanging") by state agents in order to extract a confession while in police custody;¹⁴
- ▶ A detainee on hunger strike that is force-fed despite the absence of medical necessity, and with the use of handcuffs a mouth-widener, as well as a special rubber tube and the use of force if there was any resistance;¹⁵
- ▶ Handcuffing, hooding, forced undressing, forced administration of a suppository while held on the ground and without medical necessity in order to obtain information and or humiliate;¹⁶ and
- ▶ The severe beating of a family member by the police resulting in their death.¹⁷

Important Notes:

- ◆ A series of minor acts that would not themselves constitute torture can amount to torture in summary.
- ◆ The requirement of intention does not apply to cruel, inhuman or degrading treatment.

1.6. Cruel, Inhuman or Degrading Treatment

The difference between torture and cruel, inhuman or degrading rests in the intensity and suffering inflicted. Additionally, the involvement of someone of official authority is not a requirement. Inhuman treatment must be premeditated and applied for a long time causing actual bodily injury or intense physical and mental suffering.¹⁸

Examples of suffering which has been found to constitute inhuman treatment:

- ▶ Threatening someone with torture while in police custody;¹⁹
- ▶ Made to fear being executed by foreign authorities;²⁰ and
- ▶ Exposing someone to harsh detention conditions in complete isolation after being ill-treated and with the prospect of torture.²¹

1.6.1. Degrading Treatment

“Treatment is considered to be “degrading” when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance.”²²

Humiliation can occur even if it is not perceived by others, as long as the victim feels humiliated. The fact that the treatment was not intended to humiliate the victim does not exempt it from being a violation of the prohibition to degrading treatment.

The determination of what constitutes humiliating or degrading treatment depends on various factors, mainly the nature and context of the punishment, and the manner and method of its execution. According to the European Court of Human Rights, an act must reach a certain threshold to be considered “degrading treatment”. The ECtHR, in its case-law, set that all circumstances of the case, the nature and the context of the punishment itself and the manner and method of its execution will be taken into account (*Tyrer v. the United Kingdom*, 1978)²³.

Even if punishment is an effective deterrent or aid in crime control, degrading treatment under Article 3 ECHR is never permissible²⁴.

Examples of mistreatment which can be classified as degrading:²⁵

- ▶ Forcefully shaving someone’s hair without any justification or legal basis;²⁶
- ▶ Detention for a lengthy time in a severely overcrowded and unsanitary environment;²⁷
- ▶ Strip search in an inappropriate manner such as making humiliating remarks;²⁸
- ▶ Stripped naked in front of an officer of the opposite sex, examination of sexual organs without gloves;²⁹
- ▶ Due to forced deportation, being handcuffed for a bus ride that was more than 20 hours long;³⁰ and
- ▶ Being confined in inadequate conditions in an airport transit zone, or in a police station while awaiting asylum requests.³¹

2.

WHICH FORMS OF VIOLENCE FREQUENTLY USED DURING PUSHBACKS CONSTITUTE OR AMOUNT TO TORTURE OR OTHER CRUEL, INHUMAN, AND DEGRADING TREATMENT?

2.1. Excessive and Disproportionate Use of Force

The use of physical force against individuals is permitted in only certain circumstances. Police officers, border guards and other law enforcement officers are allowed to make use of force according to the law: when it is necessary and under specific circumstances, such as in self-defence or in defence of another individual or group. Use of force is also granted in cases of arrest to ensure compliance. However, in all legal circumstances, it has to fulfil a “necessity” criteria and a strict proportionality requirement, and it must not be excessive.³² Otherwise, it “diminishes human dignity and is in principle an infringement”³³ of the prohibition of torture as enshrined in Article 3 of the European Convention of Human Rights.

The UN Special Rapporteur on Torture held that the use of force “to prevent persons from entering a State’s territory generally cannot be regarded as lawful, necessary or proportionate, and may therefore well amount to ill-treatment or even torture.”³⁴ Types of violence frequently documented by BVMN partner organisations, like violent punching, kicking and beating with police truncheons for the purposes of retaliation and humiliation, can amount to torture or ill-treatment.

Until 2022, BVMN recorded that physical violence, often excessive and disproportionate use of force, was used in 91% of all pushback testimonies, often including the use of improvised weapons such as branches of trees, (metal) batons, punches, and kicks and often resulting in broken bones and other serious injuries.

2.2. Electric Discharge Weapons (EDWs)

In some of the pushbacks documented by BVMN, EDWs are used against people on the move. The use of EDWs is lawful only if aimed at avoiding lethal outcomes, and their use should always be the last resort when less coercive means fail or prove insufficient.³⁵ It should be “limited to situations where there is a real and immediate threat to life or risk of serious injury”³⁶ and their use towards vulnerable persons should be avoided.³⁷ Contrary to the outlined necessity conditions, in pushback incidents, EDWs are used to inflict cruel, inhuman or degrading treatment or punishment.³⁸

For instance, the use of EDWs was reported in 1.86% of all testimonies taken by BVMN in 2021.

“The respondent reported that his wrists were red and his hand becoming blue and so he asked them to loosen the cable ties. The 5 officers ignored him and started looking for 3 group members that were missing. Since they did not find the missing members, the officers beat the group again. At that moment, the respondent described falling to the ground, his face entirely covered by blood. The respondent asked them to stop beating him, but he recalled them beating him even more harshly after the request.” I said to him: ‘Brother, please stop!’, but he replied: ‘No brother, fuck brother!’. Then he beat me harder.”

(BVMN. September 2022. Hungarian-Serbian border)

“After that, the respondent recalls waiting for a vehicle to arrive, while the officers were walking between them choosing people to slap. They were choosing people to slap with no reason, it was like a game for them.”

(BVMN. August 2022. Hungarian-Serbian border)

“One of the respondents was ordered to take out his nipple piercings by the officers. But, the respondent remarked, he was so nervous and he could not, despite his attempts. Then, one of the officers threatened him with an electric discharge weapon (EDW) on his chest to take them out and he got incredibly afraid. This officer then hit him over his head with a piece of wood.”

(BVMN. October 2021. Greek-Turkish border)

"The respondent recounts that he was beaten with a baton on his back, in the ribs on both sides, on his arm and shoulder on one side, and on his hand and foot. He also described that he received an electric shock on the lower back. He recalls others got electric shocks underneath their feet and that he was hearing insults such as "Fuck you" and laughter from the perpetrators."

(BVMN. September 2022. Hungarian-Serbian border)

2.3. Forced Undressing

Strip searches by law enforcement are permitted in certain situations when necessary for crime and disorder prevention.³⁹ However, forced undressing can amount to degrading treatment if it creates "feelings of anguish and inferiority capable of humiliating or debasing"⁴⁰ and can constitute a breach of the prohibition of torture. BVMN recorded evidence of systemic use of forced undressing in pushback situations which were often followed by theft of individuals' clothing, exemplifying that it has become an increasingly normalised part of pushbacks. In these circumstances, forced undressing constitutes a cruel act with the intention to humiliate and intimidate victims and thus amounts to torture or ill-treatment, impacting their mental and physical health. Furthermore, BVMN recorded instances of forced undressing despite harsh weather conditions where people's physical health was endangered, putting them at risk of hypothermia.

BVMN recorded that since 2017, in 62% of all testimonies people's belongings were taken, including clothes, and in 35% of cases belongings were destroyed in front of people on the move. Significantly, in 16% of all cases recorded, people were exposed to harsh weather conditions.

"They left us in underwear, laying on the ground for five hours, beating us when they liked it and it was really really cold. They never gave us our clothes back".

(BVMN. October 2022. Hungarian-Serbian border)

"I took off my pants, is it not enough? I don't want to take off my underwear" the officer hit him with his baton and forced them to remain completely naked so that they could find all the money they were hiding in their clothes.

(BVMN. October 2022. Romanian-Serbian border)

When our team on the field found the transit group members, they were all close to hypothermia, shivering, they couldn't feel their hands nor toes, they had lost their appetite and it took some days until they fully recovered. Reportedly, they were under the rain for around 7 hours, at 0-5 degrees.

(BVMN. November 2022. Croatian-Bosnian border)

2.4. Threats or Violence with a Firearm

The threat or excessive use of a firearm is prohibited under international law. If firearms issued to law enforcement are used with the intention to inflict pain or suffering, it can amount to either torture or cruel, inhuman and degrading treatment. For example, BVMN partner organisations documented mock executions, situations aimed at deterrence and traumatization of the victims, in which an unloaded gun was pointed at someone's head or body and the trigger is pulled. The discharging of firearms very close to someone to threaten or deter them can equally fall under this category.

Threats or violence with a firearm was recorded by BVMN in 15% of testimonies since 2017.

"[...] the 59 year old Cuban man in the group suffered from cancer or another serious disease, and was physically weakened. He therefore stopped more often than the other group members and informed the officers that he was in pain. The officers reportedly threatened him by pointing his firearm at the older man [..]"

BVMN. September 2022. Croatian-Bosnian border)

2.5. Inhuman Treatment Inside a Police Vehicle

According to statutory law and standards established by the European Court of Human Rights, human dignity must be upheld during transportation from one location to another. Confining people in extremely cramped conditions can be considered degrading treatment if it persists for a significant amount of time. Unnecessary physical discomfort has to be avoided when people are being transferred. An example of unnecessary ill-treatment is a lack of heating and ventilation or failure to provide sufficient safety measures such as seatbelts. Furthermore, reckless driving, such as suddenly hitting the brakes or overloading a boat with too many people, can also constitute degrading treatment. Locking people on the move in a police van overnight, without access to toilets, water and food could amount to ill-treatment or torture.

"In the cars it was really hot, people threw up, we demanded, we banged on the doors, they [the uniformed men] did nothing."

(BVMN. May 2022. Croatian-Bosnian border)

"He further described that they did "all kinds of bad driving" while the transit group sat in the back without seat belts - this included sudden braking and driving in circles. They did not ask the officers to stop, because this had led to beatings in the past."

(BVMN. February 2022. Croatian-Bosnian border)

There, the officers left the car, locked the doors, and left them in the back of the van overnight, without food, water, or the possibility to use a toilet. The first respondent stressed that he was so hungry and exhausted that he even ate toothpaste during this time.

(BVMN. May 2021. North Macedonian-Greek border)

2.6. Inhuman Treatment Inside a Detention Facility

Detention itself can amount to torture when it is based solely on migration status and when it is "intentionally imposed or perpetuated for such purposes as deterring, intimidating or punishing irregular migrants,"⁴¹ in particular if an individual is subjected to "hardship going beyond the unavoidable level of suffering inherent in detention."

States need to fulfil a series of obligations regarding detention conditions. The detention cells must be "of an appropriate state of repair and cleanliness," as well as "of a reasonable size for the number of persons they are used to accommodate."⁴² Additionally, there should be sufficient access to daylight, heating, ventilation, electricity and water, as well as suitable bedding and clothing.⁴³ Detainees have the right to receive information about their (procedural) rights and legal and medical assistance.⁴⁴ Failure to meet these standards can amount to torture and cruel, inhuman or degrading treatment.

BVMN recorded that in total in 35% of cases, respondents were detained either in official sites, like police stations, or unofficial, improvised or incommunicado sites.

According to the respondent, the group was then brought to a room with two sets of bunk beds and a toilet, and they were held there for about eight hours. The room was already filled with 25 other people mostly from Bangladesh, Iran and Afghanistan between the ages of 25 and 30. The respondent's sister was the only woman present, and his nephew was the only child. At one point, the respondent recounted, he asked the uniformed men for some water for the child but he was denied.

(BVMN. September 2022. Greek-Turkish border)

The respondent described the setting of the second detention space as "horrible" and alleged it to be a big farmyard with stables for animals. He said he was held in one of these stables as a cell, alongside 50-60 other people. All were being held without shoes, and many had their clothes removed before arriving.
(BVMN. May 2020. Greek-Turkish border)

3.

HOW TO DOCUMENT INCIDENTS OF TORTURE OR ILL-TREATMENT?

3.1. Example Question Guidelines

The first step towards documenting an act of torture or ill-treatment is to record the statement of the survivor or the witness. This can be done through an interview. The violence reporter should not be concerned with whether the violation amounts to torture or ill-treatment. If the person, the respondent, describes that they were subjected to situations described in the previous sections, the responsibility falls on a legal representative to provide support with navigating the legal framework and it's on the court to qualify the violation. If the respondent does not give consent to litigate, the statement can still be recorded for advocacy purposes or to access other mechanisms. The respondent should be informed of this possibility and asked for informed consent.

When conducting interviews with survivors or witnesses, it is important to consider that they are in need of protection, which would theoretically be ensured by the state, but in practice will not be ensured in most cases as witnessed by the BVMN and NGOs operating in the field. If there is a likelihood that the respondent might face retaliation or reprisals after the interview, several measures can be taken to protect the person, such as interviewing a significant number of people and submitting a collective complaint or lawsuit in order to avoid focusing attention on the one person,⁴⁵ or to not reveal the identity of the respondent and instead access mechanisms other than a lawsuit or a complaint.

While conducting an interview, the reporter should ensure that it takes place in a safe place and that surveillance is minimal (e.g. by recording the account on a recorder, instead of a phone). It is important to ask what security precautions the person believes should be taken at the start and the end of the interview, and if they are not able to answer this question the field reporter must take appropriate action and implement safeguards to the best of their knowledge.

It is crucial that in cases where the initiation to submit a complaint or a lawsuit is expressed, the violence reporter must invite the respondent to keep in contact with them after the interview.

Trying to create a safe and comfortable environment for the respondent to share their story is vital. It can be helpful to start the interview with an informal, casual conversation to ease the respondent into the procedure. Clarify with the respondent that their identity will remain anonymous unless they decide to file a lawsuit, in which case the court must be informed of the identity of the complainant. It is important not to give the impression to the respondent that they should provide an extreme version of their story and to ensure that the respondent can remain factual to the extent possible. All stories are important in their own right, and violence reporters should not encourage people to exaggerate their experiences, even if they lead to lawsuits or complaints.

The reporter should begin by asking general questions about the alleged incident:

3.1.1. Who...

- ◇...were the victims?
- ◇Group size, age, sex, country of origin, other specificities (eg. LGBTQ+)
- ◇Were there minors (under 18) involved or present?
- ◇...were the perpetrators?
- ◇How many law enforcement officers/private agents/others were involved throughout the incident?
- ◇What did they look like? (uniforms, appearances, equipment, vehicles used, etc)
- ◇Were there translators present when communicating with law enforcement officials or private security persons? If they went through an administrative or legal procedure, like registration and fingerprinting, if they were ensured interpretation? (translators could be witnesses)
- ◇What language did the police speak?

3.1.2. What...

- ◇...happened?
 - ◇What acts were they subjected to? (in their own words)
 - ◇Were they asked for a confession?
 - ◇Were they told that the violence or other acts was to “punish” them for something?
 - ◇Were they verbally insulted? What were they told? How did they understand (if they did not speak the language)?
 - ◇Did they express their intention to claim asylum? How? If yes, what was the response?
 - ◇Were they transported in a vehicle? If so, how long were they driven for and what kind of driving conditions were they exposed to?
 - ◇Were they asked to undress? Were their clothes taken away? What were the weather conditions?
- ◇...happened during the detention?
 - ◇Which place of detention were they brought to (e.g. police station, garage, stable, warehouse, vehicle)?
 - ◇Did the authorities ask or coerce the respondent(s) to read/sign anything? What language? Was an interpreter provided?
 - ◇Were the respondents given a copy of the signed papers?
 - ◇Did they take pictures/fingerprints? How?
 - ◇Were the respondent(s) able to fulfil their basic needs (access to toilets, food/ water)?
 - ◇How many officers were present at the detention site? (appearance, uniforms, language)
 - ◇How many other people on the move were detained at the site (women/children/ elderly/people with disabilities or other conditions)?

◇...kind of violence was used?

◇Did they use any weapons (batons, tasers, guns, informal weapons - tree branches etc.)?

◇Were they punched? Hit with an open hand/closed fist? Were they kicked? How long were they subjected to violence?

◇Did they have any injuries? Did they request/receive any medical assistance?

◇Can they describe/show the injuries?

◇Do they feel comfortable with pictures being taken of their injuries and attached to the report?

◇Do they have any medical reports that can be used?

3.1.3. Where...

◇...did the incident take place?

◇...what time approximately?

◇...did the group leave from on their transit attempt?

◇...was the group apprehended?

◇...was the group taken after being apprehended?

◇...was the group pushed back to?

◇...did they return to?

3.1.4. When...

◇...did the group leave on their transit attempt?

◇ How long were they in transit for?

◇...was the group apprehended?

◇ How long was the group detained?

◇...was the group pushed back to the border/across the border?

◇ How long did it take for them to be transported to/ across the border?

◇If they crossed the border again, how long did it take for the group to arrive at the location from their pushback site?

3.2. Interviewing and Approach Methodology: DOs and DON'Ts

3.2.1. DOs

- ◇Ensure you have their **fully-informed oral consent**. Clarify:
 - ◇what information is being sought,
 - ◇what will be done with this information,
 - ◇what anonymity they will have in the report, and
 - ◇what potential benefits arise from conducting the report.
 - ◇It is important not to undersell nor oversell the potential impacts of these reports to the respondent(s)

Note: *that unaccompanied minors under the age of 16 cannot be interviewed without the presence of a legal guardian.*

- ◇Create a **safe and comfortable** environment
 - ◇A private and calm environment is optimum
 - ◇Avoid distractions and interruptions
 - ◇Where possible, have female reporters available for female respondents to allow comfort of sharing intimate stories
 - ◇Avoid using translators who travelled in the same group as the respondent where possible
 - ◇Avoid interviewing more than one person at the same time as each person has their own recollection and may have witnessed different things throughout the ordeal where possible
- ◇Keep the interview as **conversation-like** as possible
- ◇Do your best to create **trust** between the respondent and you
 - ◇Remember they may have had previous negative interaction with journalists or service providers
 - ◇Be a kind and friendly face willing to listen to their stories
- ◇Ask for **specific details** where some parts are vague
 - ◇No matter how mundane, details are the backbone of the report
- ◇Use **GPS location** as points of reference for pushbacks
 - ◇Online maps can be useful here
 - ◇Specific routes during transit are not necessary to divulge
 - ◇The location of the incident of violence and pushback are the main focus
- ◇Ensure you have a logical **chronological timeline** of events
- ◇**Refer** the testimony back to the respondent at the end
 - ◇This allows them to clarify any misunderstandings or add new information
- ◇Keep the report as **factual** as possible
 - ◇Do not add your own assumptions

- ◇Have a **translator** present
 - ◇If the respondent is not able to describe the incident in question (as a result of a language barrier), it is important to have a translator present during the interview.
 - ◇Keep in mind that the translator's presence might affect the respondent(s) testimony and comfort level.
 - ◇Ensure you have a reasonable level of trust in the translator to convey information reliably.
- ◇Take **pictures** of injuries or other evidence where possible
 - ◇Anonymity is important! Pictures should not show the whole face. If the respondent wants to stay anonymous, any personal information conveyed should be censored through later editing
 - ◇Be aware of the sensitive nature of certain evidence
 - ◇Always ask for consent. Repeat the request for consent throughout if you need to make multiple requests for taking photographic evidence
 - ◇Take note of injuries that may not have been directly caused by perpetrators, but rather a result of the cruel/inhuman/degrading treatment they were exposed to (e.g. thorn scratches, infections, and blisters)
 - ◇If the respondent wants to file a complaint or litigate, it must be ensured that they are identifiable in the pictures

3.2.2. DONTs

- ◇Make the respondent feel **interrogated**
 - ◇Let them guide their story themselves
 - ◇Sometimes respondents can get confused between several incidents or if long periods of time have passed between the incident and the testimony. Consider that violent experiences are traumatic events and that the respondent's account might not be linear or chronological.
 - ◇If something doesn't add up, circle back and ask them gently to clarify
- ◇**Re-traumatize** someone for the sake of an interview
 - ◇Pay attention to body language
 - ◇If you sense distress or discomfort pause the interview and give them a moment
 - ◇Confirm they wish to continue the interview
 - ◇Terminate the testimony if you feel it's necessary
- ◇**Suggestion answers** through the phrasing of questions
 - ◇Keep your language neutral
 - ◇For example, instead of asking 'were you beaten with a baton?', consider phrasing it as 'what did they use to beat you?'
 - ◇Where assumptions have to be made or inferred from the testimony of the respondent, they should be unpacked and clarified during the context of the interview.

- ◇ **Never push** a respondent to disclose information or details
 - ◇ Putting themselves in a vulnerable situation is hard enough without excessive added pressure
 - ◇ Your main responsibility is the person, not their story
- ◇ Remember the **boundaries**
 - ◇ Always be mindful to remain objective throughout the interview
 - ◇ You often do not have the means to ensure a respondent's protection nor ensure that their claim will be decided in the positive

3.2.3. Verifying testimonies

To avoid the publication of unclear or false reports, violence reporters must keep the testimony as factual and straightforward as possible. Respondents may get confused due to experienced trauma or might not be truthful. Sometimes, respondents might not be able to distinguish between authorities and NGOs providing services and working to promote their rights. As a result, they might distrust the reporter's intentions. Also, if they have been subjected to violence and pushbacks more than once throughout their journey, they might mistake several incidents within one interview. In order to counter the possibility of publishing reports with confused, exaggerated, or false information, one should always evaluate the consistency and logic of a testimony. If something doesn't add up, the information should be clarified with the respondent or another respondent from the group, if possible.

Make sure to proceed with caution; the respondent should not feel interrogated. For example, if a respondent states they were beaten for a long period of time, asking them to explain what exactly they mean is important (very lengthy physical violence is unusual). Asking for specific details during the narrative and then asking the respondent to redescribe the event is a way of reducing uncertainty. Another possibility is to clarify with the respondent's peer or friend at a later stage. It is important to become familiar with what incidents of violence are frequent (before taking your first testimony, it is advisable to read through previous reports and use this as a basis for evaluating what a "regular" border violence testimony might entail).

3.2.4. Assumptions

It is extremely important that the violence reporter does not suggest the answers to the questions asked. The questions must be phrased as neutrally as possible. For example, instead of asking questions like "Did the officers wear masks?", the reporter must ask questions like "What exactly did the officers look like? What did they wear?" The word "beating" presents a good example: it can be used for slapping, punching, beating with a baton or an electric baton, kicking, etc. Put simply, a beating can mean different things to different people. Rather than settling for the word "beat," it is important to unpack this description and to be more specific. Instead of "the respondent was beaten by officers," one must write more objective descriptions, such as "the respondent described being struck several times in the torso by officers, who wielded batons."

3.2.5. Date and Time

A good chronology of events also helps to get more details about the other information. It cannot be stressed enough that these details, no matter how mundane they may seem to be, are the backbone of a viable report. Comparing the dates and times against existing information is important to ensure the veracity of the report. Using online maps to check the walking or driving distance and time between two locations is an important verification step, either after the recording of the report or during if the setting allows it. Respondents might not be able to remember the accurate passage of time due to the lack of a device showing time.

3.2.6. Location Data

It is good to clarify in as much detail as possible the movements and locations of the group throughout the journey. The best possible way to do this is through a GPS location; online maps are a great tool for determining location data during an interview. It is not necessary to ask any questions about the specific route that they took during transit nor obtain any GPS locations for this info. Similar to date and time estimates, location data can be hard to remember for pushed-back individuals. In these cases, asking questions which provide contextual clues as to their locations can be a helpful tool.

Ask questions such as:

- ◇Do you remember the name of the (nearest) town/village?
- ◇How long have you been walking for (or driving) since crossing the border?
- ◇How long did the journey from point A (ex. the police station) to point B (ex. the border) take?
- ◇Do you remember seeing any signs or unique landmarks?
- ◇Was it a paved or an unpaved road?

3.2.7. FRONTEX

Frontex is the European Union's Border and Coast Guard Agency. They are deployed at many different borders in the Western Balkans and Greece (Greek-Turkish land border, Albanian-Greek border, Serbian borders with Bulgaria and North Macedonia, et.al.) In general, it should be understood FRONTEX involvement might be occasional, depending on the border location. This being said, FRONTEX officers are present within the region in varying capacities, and, given the agency's position as a direct apparatus of the EU's border strategy, it is of great importance to monitor any instances in which these officers may be involved in acts of torture or ill-treatment and pushbacks. If there is an indication of FRONTEX involvement (such as non-national languages being spoken, light-blue armbands bearing the EU emblem, and the presence of foreign officers), please examine the respondent's assumptions in detail. If you determine there to be a high possibility of FRONTEX officers being involved in the incident, ask the respondent their thoughts about submitting an official complaint to the FRONTEX Fundamental Rights Office or accessing other mechanisms of complaint against the EU Agency.

3.2.8. After the Report

If possible, when the violence reporter believes they have obtained all of the relevant information, they can explain their version of the incident to the respondent with the help of the interpreter, either by reading directly if possible or reviewing the narrative again to make sure that all the information was properly recorded. In some cases, this will provide the respondent with a chance to clarify some points, add new information or correct certain information. The reporter must ensure the highest degree of objectivity throughout the transposition of the testimony.

If the person on the move wants to file a lawsuit or a complaint, distinct from testimony collection that is anonymized and the person's personal data must be recorded. The violence reporter should note the name of the respondent and, importantly, prepare to remain in contact by taking the contact details such as a phone number, an email address, a social media account or other. If the person withdraws their consent at any stage of the interview, even at the end, the information collected should be deleted. The person should be informed of the deletion and further steps should not be taken by the violence reporter.

3.3. Supporting Evidence

If a testimony will ultimately be used for legal or advocacy purposes, its claims may be strengthened by corroborating information. Sources which may provide supporting evidence include the following:

- ◇ Witness statements: testimonies of eyewitnesses or other individuals who can speak to the experiences and circumstances discussed in the initial testimony. Interview respondents from the same group separately to obtain accurate and unbiased accounts.
- ◇ Forensic medical & psychiatric evaluations: examination-based reports that demonstrate how evidence of physical or mental trauma supports the events described in a testimony.
- ◇ Expert reports: discussions of systemic and widespread practices to contextualise individual testimonies.
- ◇ Secondary sources: independent documentation of a person's ill-treatment or discussion of the broader context of human right violations in which the events discussed occurred, such as U N or NGO reports or media coverage.
- ◇ Photographs or videos of the incident recorded by the respondent to others.

3.4. Volunteer Mental Health

Given the context, it may seem that the mental health of volunteers, who in many ways operate under a blanket of privilege, is a luxury problem. We listen to stories about human rights abuses, we do not experience them. Nonetheless, this work is emotionally demanding. Fatigue, burn-out, and stress are common issues for people collecting testimonies. Feelings of guilt arising from a feeling that you are “not strong enough” are a) unfounded b) common and c) made worse by keeping them to yourself.

While complaining about these issues in front of the respondent(s) is probably inappropriate, you should understand that your community of volunteers is willing to discuss these issues. Remember, there have been many volunteers before you who dealt with this task. Former volunteers are always at your disposal to talk about the difficulties that you may be facing while collecting reports.

There is no benefit in “playing it tough” - not for you personally and not for other volunteers involved in the project who may feel pressure to follow your example (which, eventually creates a competitive, macho, environment instead of a compassionate, supportive, and collaborative one). Preventing these issues by taking a day off from the project regularly (a real day off, not a day in which you are correcting reports and helping with the humanitarian project) might feel like a selfish thing to do, but it’s recommended. Otherwise, you may be forced to finish the project prematurely or be unable to fulfil your task properly. Not taking sufficient self-care can do more harm than good to you and your environment alike. Getting the rest and care you need will also mean that you will be better able to be a compassionate, empathetic and patient interview partner for the respondents.

Understanding the symptoms of stress, fatigue and burnout is essential for preventing and addressing these feelings. Each person is different when it comes to stress inducing environments, contacts or behaviours, and each person reacts differently to such triggers. Psychological symptoms may include anger, anxiety, shame, depression, and guilt, while physical symptoms can vary from palpitations and breathlessness to chest pain, faintness, headaches, and indigestion. Make sure to check in with your mates and be aware if anyone else might be experiencing these symptoms.

Bearing this in mind, ensure that you prioritise your mental health and regularly practise stress relieving activities that you enjoy doing in your down time. For example, past volunteers have noted that they like to meditate, write, walk, listen to music or turn off their phone in order to wind down and relieve some of the stress they built up throughout their day. Do your best to find something that helps you calm your mind and detach a bit from your work. You should also find someone you feel comfortable sharing your thoughts and feelings with, and check in with them routinely, especially if you’re feeling particularly anxious or run down. Try to remember that even though sometimes it can feel like the work you’re doing is futile, in truth, every act no matter how small is imperative in fighting for social change and justice.

It is also important to remember that we work in a challenging environment with vulnerable people that can be quite intense at times. If you experience a particularly difficult or traumatic incident while on the field, you have every right to take some extra time out to rest up and deal with the episode. All field reporters understand the pressures of this work, and there should never be any judgement when it comes to prioritising your mental health and wellbeing.

There are some external resources that offer good insight into how to prevent burn out and monitor mental health while partaking in humanitarian, activist or solidarity work. Particularly noteworthy is the “Pocket Guide for Courageous People” published by our Croatian partner organisation, Center for Peace Studies.

Other resources:

- ◇ [Pocket Guide for Courageous People, Centre for Peace Studies](#)
- ◇ [Resources for Wellbeing & Stress Management by Front Line Defenders](#)
- ◇ [21 Day Activism Selfcare Challenge, Debby Irving](#)
- ◇ [Self-care and Prevention of Burnout Among Activists-Tools for Everyday Life, Frontline Aids](#)
- ◇ [Human Rights Defenders Mental Wellbeing, DefendDefenders](#)
- ◇ [Staying Resilient While Trying to Save the World: A Fanzine for Activists and Volunteers, Amnesty International](#)
- ◇ [Practising Individual and Collective Self-Care at Frida, Frida the Young Feminist Fund](#)

4.

LEGAL APPENDIX

Legal Frameworks for the Right to Freedom from Torture and Other Inhuman, Cruel, or Degrading Treatment

4.1. International

Every person is entitled to freedom from torture or other forms of ill-treatment under the United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment (CAT).⁴⁶ With the exception of twenty countries, all countries have either signed or ratified the Convention, which obliges them to implement legislation and administrative or judicial measures in order to prevent torture in their territories. Under this Convention, there are never any justifications for torture or other cruel, inhuman or degrading treatment even if there is political instability, war, the threat thereof or any other public emergency situation. The Convention also requires signatories to abide by the principle of non-refoulement, which prohibits returning a person to a country in which they could be subjected to torture or ill-treatment. Individuals or institutions which are complicit or indirectly participate in the use of torture are also liable. The same applies when there was merely an attempt to commit such crimes. An instrument for realizing the Convention's principles, the non-binding Istanbul Protocol provides international guidelines for the investigation and documentation of torture and other forms of ill-treatment and for reporting such allegations to international investigative bodies.⁴⁷

The prohibition of torture is also included in the UN International Covenant on Civil and Political Rights. Article 7 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".⁴⁸ The Universal Declaration of Human Rights prohibits torture and cruel, inhuman and degrading treatment under Article 5.⁴⁹ The prohibition of torture has the status of *jus cogens*, meaning it has been established as a fundamental, overriding principle of international law. This entails that public authorities and states have an obligation to abstain from committing torture and to investigate, prosecute and hold accountable perpetrators of torture.

4.2. European

In the European context, torture and other cruel, inhuman or degrading treatment is prohibited under Article 3 of the European Convention on Human Rights (ECHR). The European Court of Human Rights has specifically stated that the "influx of migrants and asylum-seekers" is not a justification for torture, inhuman or degrading treatment.⁵⁰ The conduct of the victim or the nature of their alleged crime also does not serve as a justification.⁵¹ Article 3 is generally applied to state agents' or public authorities' intentional actions and therefore primarily imposes a negative obligation upon states to refrain from ill-treatment.⁵² Furthermore, the article imposes a positive obligation on states which requires two

substantive obligations:(1) A legislative and regulatory framework of protection (2) Depending on the circumstances, states must apply operational measures to protect people from ill-treatment. In addition to this, a procedural obligation to investigate arguable claims is included in the interpretation of this right.⁵³

Torture is prohibited by the Charter of Fundamental Rights of the European Union in Article 4. While the Charter is applicable only to Member States of the European Union, the prohibition is absolute and applies to third-country nationals present on the territory of the state.

If you want to learn more about the legal framework around torture or other cruel, inhuman or degrading treatment or punishment, here are some other guides to look at:

- ◇ Preventing Torture: An operational guide for national human rights institutions (2010)⁵⁴
- ◇ Guide on Anti-torture legislation (2016)⁵⁵
- ◇ UN Convention against torture explainer (2019)⁵⁶
- ◇ UN Convention against torture in South Africa (2011)⁵⁷

5.

GLOSSARY

Asylum	Formal protection granted by a state to a non-citizen who has left their country due to persecution or fear of persecution
APF	Asia Pacific Forum of National Human Rights Institutions
APT Chain-pushback	Association for the Prevention of Torture A series of coordinated actions by actors of multiple states to force groups of people on the move over their borders in succession
Convention	A legally-binding agreement between states, synonymous with Covenant and Treaty
Detention	Deprivation of liberty. International law protects the freedom from arbitrary detention, meaning being detained in non-official detention conditions, or in official detention conditions without a legal justification, without the possibility to have a recourse in law
Derogability	Whether certain circumstances may justify the infringement of a right. Certain rights, including the right to freedom from torture, are non-derogable (they cannot be infringed upon under any circumstances)
ECtHR	Abbreviation for the European Court of Human Rights
Human Rights	Rights inherent to each human being, recognized and protected in domestic and international law. Human rights laws may impose positive obligations on states, requiring them to act to preserve rights, or negative obligations, prohibiting them from infringing upon rights
Non-refoulement	A fundamental principle of international human rights law which prohibits a state from returning an individual to a country where they may face persecution, torture, or other forms of cruel, inhuman, and degrading treatment. This prohibition encompasses indirect/chain refoulement, the removal of an individual to a third country from which they might be transported to the country in which they risk harm
OHCHR	Office of the United Nations High Commissioner for Human Rights
People on the move	Refers to those who, for a variety of reasons, have left their country of origin due to, among others reasons, climate change, economic and social inequalities, political conflicts, terrorism, colonial legacies and organised crime. In addition, the term specifically includes those who are in the process of moving and are still in transit, or those who are stranded.
Pushbacks	A pushback is the term coined for the illegal cross-border expulsion of people without due process. The informal cross-border returns of individuals or groups of people from one territory to another, without due process. The term pushback is contrasted with the term "deportation," which takes place within a legal framework, and the term "readmission," which is a formal procedure rooted in bilateral and multilateral agreements between states. The expulsion of a group of people, in the absence of legal procedures and without an individual examination of each case, is prohibited under international law.
Refugee	A legal status granted to someone who demonstrates a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion or membership in a particular social group

Endnotes

- 1 The basic difference between consent and informed consent is the respondents' knowledge behind the consent decision. The respondent needs to understand what they are consenting to; the respondent is consenting willingly (no one is forcing them to do so); sufficient information and explanations has been given to respondent to make the decision; and, the respondent has been given the opportunity to ask questions regarding the process(es).
- 2 Cruel, inhuman or degrading treatment and ill-treatment are synonyms and will be used interchangeably in this report.
- 3 United Nations Human Rights Council. 2018. "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/37/50". [Online]. [Accessed last 30.01.2023]. Available at: https://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf.
- 4 United Nations Office on Drugs and Crime. 2020. "Handbook on the use of force by private security companies". [Online]. [Accessed last 30.01.2023]. Available at: https://www.unodc.org/documents/Maritime_crime/19-02086_Private_Security_Company_Handbook_Maritime_Crime_ebook.pdf
- 5 Registry of the European Court of Human Rights. 2022. "Guide on Article 3 of the European Convention on Human Rights". [Online]. [Accessed last 30.01.2023]. Available at: https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf.
- 6 European Court of Human Rights. 2014. O'Keeffe v. Ireland. [Online]. [Accessed last: 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-140235%22>).
- 7 UN Committee against Torture. 1999. "Communication No. 120/1998". [Online]. [Accessed last 30.01.2023]. Available at: <https://atlas-of-torture.org/en/entity/dfclhwnt1u3kbzaasqemf5hfr?page=1>.
- 8 Hajrizi Dzemajl et al. v. Yugoslavia, UN CAT/C/29/D/161/2000, 2 December 2002. [Online]. [Accessed last 01.02.2023]. Available at: <https://juris.ohchr.org/casedetails/175/en-US>
- 9 Amnesty International. 2022. Torture. [Online]. [Accessed last 02.12.2022]. Available at: <https://www.amnesty.org/en/what-we-do/torture/>
- 10 UN Human Rights Instruments. Universal Instruments. Adopted 16 December 1991. General Assembly Resolution 49/61. [Online]. [Accessed last: 01.02.2023]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>
- 11 UN Human Rights Instruments. Universal Instruments. Core Instrument. Adopted 18 December 1979. United Nations General Assembly. [Online]. [Last accessed: 01.02.2023]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
- 12 R.S.A.A. v. Denmark. CEDAW/C/73/D/86/2015. 15 July 2019. [Online]. [Last accessed 01.02.2023]. Available at: <https://juris.ohchr.org/casedetails/2654/en-US>
- 13 The Guardian. 2020. "Croatian police accused of spray-painting heads of asylum seekers". [Online]. [Accessed last 30.01.2023]. Available at: <https://www.theguardian.com/global-development/2020/may/12/croatian-police-accused-of-shaving-and-spray-painting-heads-of-asylum-seekers>
- 14 European Court of Human Rights. 1996. "Aksoy v Turkey". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58003&filename=001-58003.pdf&logEvent=False>.
- 15 European Court of Human Rights. 2005. "Nevmerzhitsky v Ukraine". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-68715%22>).
- 16 European Court of Human Rights. 2012. "El-Masri v the former Yugoslav Republic of Macedonia". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-115621%22>).
- 17 European Court of Human Rights. 2020. "Satybalova and Others v Russia". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-203313%22>).
- 18 European Court of Human Rights. 2000. "Kudla v Poland". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-58920%22>).
- 19 European Court of Human Rights. 2010. "Gäfgen v. Germany". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-99015%22>).
- 20 European Court of Human Rights. 2020. "Al-Saadoon and Mufdhi v. the United Kingdom". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-97575%22>).
- 21 European Court of Human Rights. 2018. "Al Nashiri v. Romania". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-183685%22>).
- 22 Registry of the European Court of Human Rights. 2022. "Guide on Article 3 of the European Convention on Human Rights". [Online]. [Accessed last 30.01.2023]. Available at: https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf
- 23 Ibidem.
- 24 European Court of Human Rights. 1978. "Tyrrer v. the United Kingdom". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-57587&filename=CASE%20OF%20TYRER%20V.%20THE%25UNITED%20KINGDOM.pdf>
- 25 European Court of Human Rights. 2022. "Guide on Article 3 of the European Convention on Human Rights". [Online]. [Accessed last 30.01.2023]. Available at: https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf
- 26 ECtHR. 2010. "Yankov v. Bulgaria". [Online]. [Accessed last 30.01.2023]. Available at: http://hrlibrary.umn.edu/research/bulgaria/YANKOV_AND_OTHERS.pdf.
- 27 ECtHR. 2002. "Kalashnikov v. Russia". [Online]. [Accessed last 30.01.2023]. Available at: <https://www.refworld.org/cases/ECHR.416bb0d44.html>.
- 28 ECtHR. 2001. "Iwańczuk v. Poland". [Online]. [Accessed last 30.01.2023]. Available at: <https://www.refworld.org/cases/ECHR.3fe6fe164.html>.
- 29 ECtHR. 2001. "Valašinas v. Lithuania". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-59608%22>).
- 30 ECtHR. 2022. "Akkad v. Türkiye". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7364545-10062220&filename=Judgment%20Akkad%20v.%20T%C3%BCrkiye%20-%20Forced%20return%20of%20a%20Syrian%20national%20with%20a%20valid%20residence%20permit%20to%20Syria.pdf>.
- 31 ECtHR. 2010. "Tabesh v. Greece". [Online]. [Accessed last 30.01.2023]. Available at: <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-95892%22>]. See also ECtHR. 2017. "Z.A. and Others v. Russia". [Online]. [Accessed last 30.01.2023]. Available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=58da5fd94>.