



Border Violence Monitoring Network

27 June 2022

## FAA against Greece

Third Party Intervention  
to the UN Human Rights Committee





Office of the United Nations High Commissioner for Human Rights  
Palais Wilson 52 rue des Pâquis CH-1201  
Geneva, Switzerland

27 June 2022

To the Human Rights Committee,

Pursuant to Rule 96 (1) of the Rules of Procedure of the Human Rights Committee, the Border Violence Monitoring Network (“BVMN”) registered as a charity under the legal framework of Rigardu e.V., at Wurzner Str. 34, 04315 Leipzig, Germany, respectfully submits a third party intervention in the case of *FAA against Greece* communicated on 17 November 2020.

### **Information about the Intervenor**

BVMN is a network of non-governmental organisations situated along the Balkan and Greek migration route, which monitors, documents and advocates against human rights violations at Europe’s borders.<sup>1</sup> Since 2017, BVMN has collected more than 1,500 testimonies of summary expulsions (pushbacks). With such evidence BVMN produces comprehensive reports, analysing trends in border violence.<sup>2</sup> BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including third party interventions to the European Court of Human Rights and legal briefings to Special Rapporteurs on states’ use of torture during pushbacks.<sup>3</sup>

The case of *FAA against Greece* concerns violations of a myriad of rights under the International Covenant on Civil and Political Rights, ratified by Greece on 5 May 1997. FAJ’s individual case is part of a broader pattern of arbitrary arrest, secret detention, torture or cruel, inhuman or degrading treatment or punishment, and subsequent summary expulsion of migrants from Greece to Turkey, where they then also face the risk of chain *refoulement*, enforced disappearance and arbitrary loss of life. In particular, *FAA* alleges that the applicant was subjected to an initial illegal expulsion to Turkey while in Greece having traveled with his German residency documents. Subsequently, after his identification documents were taken away, he attempted to re-enter Greece, but was subject to over a dozen pushbacks, attesting to the systemic border policy which included a denial to register and confirm his international protection status in Germany by the Greek authorities.

In the following, BVMN seeks to provide information and expertise on the *modus operandi* of pushbacks in the Evros-Meriç region, at the Greek-Turkish border, that the Greek state and other

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<sup>1</sup> BVMN is represented under the legal framework of Rigardu e.V.

<sup>2</sup> See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile

Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks> [Accessed 29 March 2022].

<sup>3</sup> See for example: BVMN. 2021. Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

actors, operating in the area with the knowledge and permission of the Greek state, facilitate. Our intervention in the present case will show how pushback practices lead to violations of Articles 6(1), 7, 9, 10(1), 13, 16 and 17, read alone or in conjunction with Article 2(3), and article 24 (1) of the ICCPR. To date, BVMN and its partners have collected 171 individual pushbacks testimonies from Greek territory detailing the practices of secret detention, summary expulsion and ill-treatment, abuse and torture of more than 11,093 people.

### **Documented modus operandi of pushbacks at the land border in the Evros-Meric region**

Clandestine pushback operations have been documented for more than a decade.<sup>4</sup> The Special Rapporteur on the human rights of migrants confirmed that pushback practices are not only widespread,<sup>5</sup> but have also become *de facto* general policy in Greece.<sup>6</sup> Throughout the years, the modus operandi has remained consistent in its substance, confirming the systematic nature of pushbacks. Due to this reason, testimonies which refer to a period that pre- and post date the events of the case of FAA, can nevertheless give insight on pushback operations during the years of 2016 and 2017.

#### **I. Broader pattern of arbitrary arrest and secret detention**

Secret detention constitutes a flagrant violation of the International Convention of Political and Civil Rights (ICCPR), ratified by Greece on 5 May 1997, involving a compounded rights violation enshrined in articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3), of the ICCPR. A failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.<sup>7</sup> As affirmed in the joint study on global practices in relation to secret detention in the context of countering terrorism, persons held in black sites or secret detention are considered to be ‘incommunicado’.<sup>8</sup> Widespread use of detention, including both secret and incommunicado detention, that ‘exceeds a matter of days’ constitutes a violation of the Convention and the General Assembly resolution 43/173 on the body of principles for the protection of all persons under any form of detention or imprisonment. Importantly, there is no minimum duration, according to international human rights standards, during which a detained person must be subjected to secret detention, in order to classify their situation as one of an enforced disappearance.<sup>9</sup>

Furthermore, the Greek State is mandated to hold detainees only in officially recognized places of detention indicated in an official register<sup>10</sup> and to ensure effective safeguards against arbitrary arrest (i.e. the issuance of an arrest warrant when a person is arrested) and detention and the prevention of secret detention. Immigration related detention must be reasonable, necessary and proportionate in light of the circumstances.<sup>11</sup> Within the framework of a habeas corpus, the competent judicial authorities and/or investigators should have full access to any place where persons deprived of liberty

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<sup>4</sup> Pro Asyl, ‘Pushed Back, Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border’, 2013. [Online]. Available from:

[https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf); Amnesty International, ‘Greece: Frontier of Hope and Fear’, 2014; Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019; Border Violence Monitoring Network, Database [Online].

<sup>5</sup> See: A/HRC/47/30, Summary and para. 55.

<sup>6</sup> See: A/HRC/50/31, para. 32.

<sup>7</sup> See: AL TUR 5/2020.

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

<sup>9</sup> See: CED/C/10/D/1/2013, para. 10.3.

<sup>10</sup> Human Rights Committee, general comment No. 20, para. 11; Communication No. 1134/2002, Fongum Gorji-Dinka v Cameroon, Views adopted by the Human Rights Committee on 17 March 2005, para. 5.2.

<sup>11</sup> Communication No. 560/1993, *A v Australia*, Views adopted by the Human Rights Committee on 3 April 1997, paras. 9.3-9.4

may be kept, or places where there are grounds to believe that such persons may be found, irrespective of whether or not such places are official detention facilities.<sup>12</sup>

During 2017 and 2018, the time of the events described in FAJ, the arbitrary arrest of migrants, asylum seekers and refugees has been identified as usually occurring close to the Evros/Meriç river and in the border towns of Orestiada and Didimoticho.<sup>13</sup> Migrants were often intercepted shortly after crossing into Greece through the land border. Individuals were then routinely taken from their point of arrest to secret detention sites in vans driven by uniformed personnel. During the arrest and detention, the officers were either wearing Greek police uniforms, camouflage clothing which resembled military uniforms or dressed completely in black, as well as covering their faces with balaclavas, concealing the perpetrator's identity.<sup>14</sup>

Testimonies collected between 2012 and 2018 demonstrate how Greek police have mainly used police stations,<sup>15</sup> but also other improvised detention sites such as warehouses, garages and abandoned buildings, to detain migrants and refugees.<sup>16</sup> The detention sites have been described as "remote [and] abandoned",<sup>17</sup> a stable without a proper floor,<sup>18</sup> or a "caged terrace" close to railway tracks.<sup>19</sup>

During detention, the arrested individuals are reportedly deprived from life-sustaining supplies, such as food, water and medicaments.<sup>20</sup> Additionally, it has been documented that minors<sup>21</sup> and

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<sup>12</sup> See: A/HRC/45/13/Add.3, para. 21.

<sup>13</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 5-8; ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018.

<sup>14</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 17-19; Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 3; Border Violence Monitoring Network. (2019). They arrived in two vehicles with four policemen [...]. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/july-3-2019-1100-komotini-greece/>; Border Violence Monitoring Network. (2019). I don't know if he is dead or alive. I have no idea. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/november-29-2019-0600-evros-river-near-uzunkopru-est-loc/>.

<sup>15</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 9, 14 and 17.

<sup>16</sup> Pro Asyl, 'Pushed Back, Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border', 2013. [Online]. Available from:

[https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf), 30; ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 5, 14 to 18.

<sup>17</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 5.

<sup>18</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 14.

<sup>19</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 15.

<sup>20</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 2, 8, 9, 10; Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 4, 6; Pro Asyl, 'Pushed Back, Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border', 2013. [Online]. Available from:

[https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf), 57, 65; Border Violence Monitoring Network. (2021). When we asked for asylum, they sent the officers wearing masks to beat us. [Online]. Available from:

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

<sup>21</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 9, 10; ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 10, 15; Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 4, 6.

pregnant women<sup>22</sup> are amongst the people arbitrarily detained, which would constitute a violation of article 24(1) of the ICCPR. This practice is also in contravention of the Greek States' duty to protect the right to life by taking "special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence", including unaccompanied migrant children, children, asylum seekers and refugees.<sup>23</sup>

Intercepting and detaining authorities fail to formally register detained migrants, and reportedly provide falsified information in relation to the whereabouts of the detained to lawyers.<sup>24</sup> Apparent strategies of denial, concealment and secrecy of the arbitrary arrest of migrants, resulting in their incommunicado detention for a few hours<sup>25</sup>, several days<sup>26</sup> up to one week,<sup>27</sup> also involve the routine confiscation and destruction of electronic devices, including mobile phones.<sup>28</sup> This impedes those arbitrarily detained to locate their place of detention using GPS, and their ability to request help. Arbitrarily arrested individuals are also stripped of any pre-existing registration status in order to deny that they have resided in Greek territory, according to the testimonies received by BVMN.<sup>29</sup> Consequently, individuals have been separated from the outside world, obscuring the existence of detained persons and putting them in a situation outside of the protection of the law.

**We submit that these practices of concealment, arbitrary arrest and secret detention of migrants, asylum seekers and refugees, including children, representing multiple rights violations as enshrined in articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3), and article 24(1) of the ICCPR, constitute an integral and systemic part of the modus operandi of pushbacks along the land border between Greece and Turkey.**

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<sup>22</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 24; Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 2, 6.

<sup>23</sup> General Comment 36, para. 23.

<sup>24</sup> Pro Asyl, 'Pushed Back, Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border', 2013. [Online]. Available from: [https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf), 10; Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 3; Border Violence Monitoring Network. (2020). The System is like this, come back tomorrow [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e/>.

<sup>25</sup> See Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 8, 10, 12, 13 and 18 referring to a range of a couple of hours up to twenty hours; Border Violence Monitoring Network. (2019). Commandos should have taken care of humanity; they punched me and took my 400 Euros'. [Online]. Available from:

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

<sup>26</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 2 and 18 referring to migrants being held 6 to 7 days in detention centers; Border Violence Monitoring Network. (2019). They beat us with a baton without caring which part of the body they would hit. [Online]. Available from:

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

<sup>27</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 18; Border Violence Monitoring Network. (2019). "Detained for two days without food, without water." [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/december-11-2019-0000-soufli-greece/>.

<sup>28</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 16 and 26; Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 14; Border Violence Monitoring Network. (2019). Beaten and imprisoned by Greek Police. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/october-24-2019-0000-nea-vyssa/>.

<sup>29</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, testimony 2. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-2/>; Border Violence Monitoring Network. (2021). When we asked for asylum, they sent the officers wearing masks to beat us. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/april-14-2020-1300-evros-meric-river-near-gemici-turkey/>.

## II. Broader Pattern of summary expulsion of migrants from Greece to Turkey

Violations of the right to life, torture and cruel, degrading or inhuman treatment or punishment, arbitrary detention or combined violations of these rights, e.g. enforced disappearances, have been continuously documented in countries such as Turkey or Syria, to which migrants are returned via the Evros/Meriç River.<sup>30</sup> In this context, instances where migrants are expelled, returned, refused access, transferred, deported, extradited or otherwise removed from Greek territory to any of the above-mentioned countries, constitute a violation of the non-derogable non-refoulement principle, enshrined in international customary law.<sup>31</sup> The obligation to refrain from *refoulement* applies with respect to everyone within the “effective authority and control” of a State.<sup>32</sup> Hence, States that detain or otherwise control a person outside the State’s national boundaries must also respect the obligation. Furthermore, the rejection of migrants at the border does not release the State from this obligation.<sup>33</sup> Considering the documentation of *chain refoulement* of migrants to Syria via Turkey,<sup>34</sup> we highlight that the removal or expulsion of a person to a third country which will subsequently send the person onward to a place where there exists the risk of serious human rights violations constitutes “indirect refoulement”, and is equally prohibited.<sup>35</sup> We note that the obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant is broader in scope than the principle of *non refoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status.<sup>36</sup>

After the arrest and detention, it is documented that migrants are being transported during the night to the riverbank of the Evros/Meric river.<sup>37</sup> Subsequently, they are forced to board rubber dinghies which transfer them to the Turkish side of the river. Some migrants describe how members of the commando groups drive the rubber dinghies<sup>38</sup> while others report that they had to drive the boat themselves, but were followed by the Greek police in a “speedboat” to make sure they reached the

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<sup>30</sup> See TUR 4/2018; TUR 6/2018; TUR 5/2020; SYR 2/2014; SYR 8/2014; SYR 4/2020.

<sup>31</sup> See: A/HRC/36/39/Add.2, para. 33; A/HRC/33/51/Add.1, para. 55; A/HRC/24/46, paras. 67-74; Human Rights Committee, general comment No. 20, para. 9, general comment No. 31, para. 12; See also Violations of the right to life: E/CN.4/2005/7, para. 19(g); Torture and cruel, inhuman or degrading treatment or punishment: Human Rights Committee, general comment No. 20, para. 2, UNHCR Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 2007, para. 21; Enforced Disappearances: International Convention for the Protection of All Persons from Enforced Disappearance art. 16; Arbitrary Detention: UN Convention Relating to the Status of Refugees art. 33(1).

<sup>32</sup> Human Rights Committee, general comment No. 31, para. 10.

<sup>33</sup> UNHCR Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 2007, paras. 20 and 35; See General Assembly resolution 2312 (XXII), art. 3(1) on rejection at frontiers.

<sup>34</sup> Amnesty International, ‘Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal’, April 2016. [Online]. Available from: <https://www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

<sup>35</sup> Human Rights Committee, ‘General Comment No. 31 on the Nature of the General Legal Obligation Imposed on State Parties to the Covenant’, 2004, para 12.

<sup>36</sup> Human Rights Committee, ‘General Comment No.36 on Article 6 of the ICCPR, on the right to life’, 2018, para 31.

<sup>37</sup> Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, 11.

<sup>38</sup> ARSIS, Greek Council for Refugees and HumanRights360, ‘The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River’, December 2018, 6, 8, 10, 12 to 15.

other shore.<sup>39</sup> Other testimonies document that migrants were driven to small islets on the river, where they were abandoned because the commando groups considered them to be on Turkish territory.<sup>40</sup>

Collective or mass expulsions are prohibited in all circumstances as it does not take into consideration the individual circumstances or situation of each person.<sup>41</sup> During the expulsion, migrants are forbidden to speak to each other or any member of the Greek police or commando group present. Disobedience thereof, results reportedly in physical violence, such as beatings.<sup>42</sup> Based on the documented modus operandi, these collective expulsions are conducted in an unofficial manner, without a legal process. Therefore, the expulsion is not carried out in accordance with the law and does not allow for individual review, including the right to present one's reasons, to have access to legal counsel and interpretation, and to appeal against a removal order and the right to seek a stay of the decision pending review.<sup>43</sup> No legal pathways exist in which migrants could challenge their removal, therefore violating the basic requirements of due process stipulated in article 14 of the ICCPR. This confirms the arbitrary and thus illegal nature of these expulsions.

Asylum seekers and refugees are not allowed to speak during these operations, deliberately hindering them from drawing attention to their request to seek asylum and having their case individually examined by relevant state authorities. This violates the obligation of the Greek State to give every individual facing removal, regardless of their legal status,<sup>44</sup> an adequate opportunity to explain their situation in a manner that would enable them to contribute meaningfully to an appropriate assessment of the effects of their removal.<sup>45</sup>

It has further been reported that affected migrants have told the operating police forces and commando groups that they were applying for international protection,<sup>46</sup> or have been already granted refugee or subsidiary protection status and therefore were lawfully on Greek territory.<sup>47</sup> Any arbitrary expulsion, not considering the necessary procedural safeguards as outlined above, of those aliens already lawfully on a territory of a State Party to the ICCPR constitutes a violation of article 13 of the ICCPR. These practices may further give rise to related rights violations, such as the separation from an individual's family, constituting arbitrary interference with family life.<sup>48</sup>

**We submit that the practices of expelling migrants across the Evros/ Meric river are the core component of the modus operandi of pushbacks along the land border between Greece and**

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<sup>39</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 15.

<sup>40</sup> Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 10.

<sup>41</sup> Human Rights Committee, general comment No. 15, paras 9 and 10; concluding observations: Dominican Republic, CCPR/CO/71/DOM, para. 16.

<sup>42</sup> Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 1 and 5.

<sup>43</sup> Human Rights Committee, concluding observations: Ireland, CCPR/C/IRL/CO/3, para. 19.

<sup>44</sup> A/HRC/29/36, paras. 39-40.

<sup>45</sup> Human Rights Committee, *Al-Gertani v. Bosnia Herzegovina*, Communication No. 1955/2010 (2013), para 10.9.

<sup>46</sup> Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 6, 8, 10.

<sup>47</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, testimony 2. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-2>.

<sup>48</sup> Communication No. 1246/2004, *Gonzalez v. Republic of Guyana*, Views adopted by the Human Rights Committee on 25 March 2010, CCPR/C/98/D/1246/2004, paras. 14.3-4.

**Turkey, constituting a flagrant violation of the prohibition of arbitrary expulsion of aliens, enshrined in article 13 of the ICCPR and the non-refoulement principle.**

### **III. Broader pattern of related violations of the right to life and to be free from torture or cruel, inhuman or degrading treatment or punishment**

Refugees, asylum seekers and migrants have reportedly been subjected to beatings and other physical ill-treatment throughout clandestine pushback operations and in secret detention. Mobile Info Team, BVMN's member organization based in Greece, has collected pushback testimonies throughout the year of 2017 and 2018 which document the beatings of asylum seekers before they are pushed back across the Evros/Meric river.<sup>49</sup> In one recorded incident, the interviewee reported that the Greek police used metal sticks not only to target the adults of the group, but also to beat the minor children, reportedly resulting in one 9-year old girl suffering from a broken leg.<sup>50</sup> This constitutes a flagrant violation of the special protection afforded to minors pursuant to Article 24(1) of the ICCPR. These findings have been supported by other testimonies collected by the Greek Council for Refugees<sup>51</sup> and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>52</sup> The latter also referred to ill-treatment that included slapping, dragging and throwing, as well as kicking various body parts of the victims, including their heads.<sup>53</sup> The severity of these violent acts has been continuously documented since 2017, involving, amongst others, the beating of a pregnant woman<sup>54</sup> and beatings which have resulted in a serious head injury<sup>55</sup> and broken arms.<sup>56</sup>

Furthermore, arbitrarily arrested refugees, asylum seekers and migrants are reportedly physically assaulted on the way to and from the detention facilities in order "not to look up at the uniformed personnel [and not to] recognize or identify the surroundings of the detention facilities".<sup>57</sup> Other reported grounds included to punish migrants for misleading the Greek police about their national identity,<sup>58</sup> and to force them into the vehicles and rubber dinghies that are used during the pushback operations.<sup>59</sup> Additionally, some victims described the use of violence to entertain involved

<sup>49</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, testimony 1 and 2. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-1> and <https://www.mobileinfoteam.org/testimony-2>.

<sup>50</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, testimony 8. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-8>.

<sup>51</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018.

<sup>52</sup> European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 'Report to the Greek Government on the visit to Greece', April 2018. CPT/Inf (2019) 4. Available from: <https://rm.coe.int/1680930c9a>.

<sup>53</sup> European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 'Report to the Greek Government on the visit to Greece', April 2018. CPT/Inf (2019) 4. Available from: <https://rm.coe.int/1680930c9a>, para. 139.

<sup>54</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 19.

<sup>55</sup> Border Violence Monitoring Network. (2019). Commandos should have taken care of humanity; they punched me and took my 400 Euros'. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/may-18-2019-0300-mandra-greece/>.

<sup>56</sup> Border Violence Monitoring Network. (2019). Beaten and imprisoned by Greek Police. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/october-24-2019-0000-nea-vyssa/>.

<sup>57</sup> Border Violence Monitoring Network. (2019). They beat us with a baton without caring which part of the body they would hit. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/november-6-2019-0000-orestiada/>; European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 'Report to the Greek Government on the visit to Greece', April 2018. CPT/Inf (2019) 4. Available from: <https://rm.coe.int/1680930c9a>, para. 139.

<sup>58</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 28.

<sup>59</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018; Mobile Info Team, Annual Report 2018-2019,



police forces and other unidentifiable actors, recalling the perpetrators “laughing the whole time” and “having fun”.<sup>60</sup>

In regard to the secret detention facilities, procedural safeguards upon arrest and during the first hours of deprivation of liberty, such as immediate registration, judicial oversight of the detention, notification of family members and access to legal counsel and interpretation, are essential to prevent possible violations, such as torture.<sup>61</sup> Secret detention exposes the detainee to conditions that have been described to reach the threshold of constituting torture or cruel, inhuman or degrading treatment or punishment.<sup>62</sup>

Arrested individuals have been held in vastly overcrowded cells,<sup>63</sup> where they were further mistreated by being deprived of food and water for more than 24 hours<sup>64</sup> and able to use only filthy toilets that exposed detainees to diseases.<sup>65</sup> These conditions constitute ill-treatment, a violation of their right to the highest attainable standard of physical and mental health, and by implication, the right to life. One interviewee described the treatment in a secret detention facility similar to that of a hostage, being denied food and water by the guards and instead being told to drink water from the toilet and to pay money in order to receive food.<sup>66</sup>

Concerning the methods of transportation during the clandestine pushback operations, several testimonies confirm that the vehicles, which are used to drive the arbitrarily arrested people to and from the secret detention facilities, are either without or very small windows, leading to people being unable to breathe properly due to a lack of oxygen.<sup>67</sup> Additionally, several victims described the vehicles as too small to fit the number of transported detainees who were crammed into them by the police and commando forces.<sup>68</sup>

Moreover, the inflatable boats, which are used to drive people onto small islets on the Evros/Meric river or to the Turkish riverbank, have been described as overcrowded by several

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‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, testimony 8. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-8>; Border Violence Monitoring Network. (2019).

They arrived in two vehicles with four policemen [...]. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/july-3-2019-1100-komotini-greece/>.

<sup>60</sup> Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, 20.

<sup>61</sup> Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Honduras, CAT/OP/HND/1, para. 146(a).

<sup>62</sup> Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7.

<sup>63</sup> Border Violence Monitoring Network. (2020). Removed from Thessaloniki and pushed back across the Meric River. [Online]. Available from:

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

<sup>64</sup> Border Violence Monitoring Network. (2019). Commandos should have taken care of humanity; they punched me and took my 400 Euros’. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/may-18-2019-0300-mandra-greece/>; Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, 9 to 11.

<sup>65</sup> Border Violence Monitoring Network. (2019). They arrived in two vehicles with four policeman. One was a white Nissan pickup while the other one was a Jeep. [Online]. Available from:

<https://www.borderviolence.eu/violence-reports/july-3-2019-1100-komotini-greece/>.

<sup>66</sup> Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, testimony 8. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-8>.

<sup>67</sup> ARSIS, Greek Council for Refugees and HumanRights360, ‘The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River’, December 2018, 24; Greek Council for Refugees, ‘Reports and Testimony of Systematic Pushbacks in Evros’, February 2018, 8.

<sup>68</sup> Mobile Info Team, Annual Report 2018-2019, ‘Evidence of Human Rights Abuse at the Greece/Turkey Border’, November 2019, 6.

victims.<sup>69</sup> This practice puts migrants in danger of falling into the river, exposing them to the risk of drowning or dying from hypothermia and therefore violating Greece's due diligence obligations in relation to the protection of the right to life.

Drowning is the main cause of death for 70% of the recorded migrant deaths at the Evros border.<sup>70</sup> The large width of the river, the steeply unequal depth and muddy texture of the riverbed, the lack of clarity and speed of the water heighten that risk the river presents to the migrant's life.<sup>71</sup> The river is fast year round, with a mean annual flow rate of 103 cubic metres per second, and increases twofold between the months of December and April, making this time of the year increasingly perilous to cross.<sup>72</sup> For example, in 2021 BVMN reported that after a pushback, having spent two days stranded on an islet, "one young Palestinian man did try to make his way through the water [...] but he drowned in the river".<sup>73</sup> Also in 2021, BVMN member organisation Josoor reported on the death of 16-year-old Faysal Rahmouni, after being abandoned there during a pushback.<sup>74</sup> Similarly in 2020, a respondent told BVMN how "we were stuck on a small island in the middle of the river for two days. Some guys were taken by the river when they tried to get back".<sup>75</sup>

Furthermore, hypothermia accounts for the second most common cause of death at the Evros border.<sup>76</sup> Frigid conditions during winter, exhaustion after swimming and multiple soaked layers of clothing are predisposing factors to death by hypothermia.<sup>77</sup> In January and February, the average minimum temperatures in the region drop to just above freezing, with some nights dropping below 0 degrees celsius; the temperature of the water of the Evros river is also very low during these months.<sup>78</sup> As reported by the International Committee of the Red Cross in 2017, "wet, cold, tired and lost, a mother and son who successfully crossed Evros lay down on the riverbank afterward. Hypothermia

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<sup>69</sup> Greek Council for Refugees, 'Reports and Testimony of Systematic Pushbacks in Evros', February 2018, 2; European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 'Report to the Greek Government on the visit to Greece', April 2018. CPT/Inf (2019) 4. Available from: <https://rm.coe.int/1680930c9a>, para. 139.

<sup>70</sup> Marianna Karakoulaki, 'The deadly Evros River borderland', 2018. [Online]. Available from: <https://www.dw.com/en/the-deadly-evros-river-borderland/g-45301014>.

<sup>71</sup> Pavlos Pavlidis and Maria-Valeria Karakasi, 'Greek land borders and migration fatalities – Humanitarian disaster described from the standpoint of Evros'. 2018. [Online] Available from: [https://www.researchgate.net/publication/335677441\\_Greek\\_land\\_borders\\_and\\_migration\\_fatalities\\_-\\_Humanitarian\\_disaster\\_described\\_from\\_the\\_standpoint\\_of\\_Evros](https://www.researchgate.net/publication/335677441_Greek_land_borders_and_migration_fatalities_-_Humanitarian_disaster_described_from_the_standpoint_of_Evros).

<sup>72</sup> Ifor Duncan and Stefanos Levidis, 'Weaponizing a River', 2020. [Online]. Available from: <https://www.e-flux.com/architecture/at-the-border/325751/weaponizing-a-river>.

<sup>73</sup> Border Violence Monitoring Network. (2021). They kept saying to us "arab dog". You can't imagine how much hatred was there. It felt like it was a retaliation. Available from: <https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>.

<sup>74</sup> Josoor. (2021). They left them on an island. He couldn't swim, he called his mother one last time. Greece has become hell for refugees. [Online]. Available from: <https://www.josoor.net/post/they-left-them-on-an-island-he-couldnt-swim-he-called-his-mother-one-last-time-greece-has-become-hell-for-refugees>.

<sup>75</sup> Border Violence Monitoring Network. (2020). Sometimes they hit you with the baton, for nothing. Just like that. For fun maybe. [Online]. Available from: <https://www.borderviolence.eu/violence-reports/november-14-2020-0000-dilofos-kapikule/>.

<sup>76</sup> Marianna Karakoulaki, 'The deadly Evros River borderland', 2018. [Online]. Available from: <https://www.dw.com/en/the-deadly-evros-river-borderland/g-45301014>; Ifor Duncan and Stefanos Levidis, 'Weaponizing a River', 2020. [Online]. Available from: <https://www.e-flux.com/architecture/at-the-border/325751/weaponizing-a-river>.

<sup>77</sup> Pavlos Pavlidis and Maria-Valeria Karakasi, 'Greek land borders and migration fatalities – Humanitarian disaster described from the standpoint of Evros'. 2018. [Online] Available from: [https://www.researchgate.net/publication/335677441\\_Greek\\_land\\_borders\\_and\\_migration\\_fatalities\\_-\\_Humanitarian\\_disaster\\_described\\_from\\_the\\_standpoint\\_of\\_Evros](https://www.researchgate.net/publication/335677441_Greek_land_borders_and_migration_fatalities_-_Humanitarian_disaster_described_from_the_standpoint_of_Evros).

<sup>78</sup> Climatemps. n.d. Average Temperatures in Alexandroupolis, Greece. [Online]. Available from: <https://www.alexandroupoli.climatemps.com/temperatures.php>.

killed both”.<sup>79</sup> This year, in February 2022, the Turkish Ministry of Interior reported that 12 migrants had been found dead close to the Turkish/ Greek border crossing of Ipsala. The Turkish Ministry stated that the 12 deceased were part of a group of 22 migrants who had been pushed back to Turkey by the Greek authorities.<sup>80</sup>

Considering that the frequent reports of life threatening circumstances in the region of the Evros river for migrants attempting to cross this river have been widely reported, the Greek State finds itself under a heightened due diligence obligation to ensure and protect against any violations of the right to life,<sup>81</sup> including by appropriate operational measures aimed to prevent any arbitrary loss of life.

Lastly, as repeatedly found by the Human Rights Committee, the situation of relatives who remain without knowledge about the fate or whereabouts of a disappeared person for extended periods of time constitutes torture or cruel, inhuman or degrading treatment.<sup>82</sup> Ultimately, as many of the bodies of deceased migrants are not identified, or returned to their respective families,<sup>83</sup> thereby violating procedural obligations related to the right to life, these practices may also constitute a violation of article 17 of the ICCPR.

**Therefore, BVMN submits that the above practices, including the deliberate overcrowding of police vehicles and small inflatable boats, as well as the failure to investigate and identify human remains, not only meets the threshold of torture or cruel, inhuman or degrading treatment or punishment, but also exposes migrants, refugees and asylum seekers to grave and foreseeable risk to their lives, in violation of articles 6, 7 and 17 of the International Covenant on Civil and Political Rights.**<sup>84</sup>

#### **IV. Practices of intentional confiscation and destruction of mobile phones and registration status and identity related documents from migrants**

Since 2012, it has been documented that the Greek police and other unidentifiable non-state actors are taking away the personal belongings (identity documents and mobile phones) of asylum seekers and refugees during pushback operations at the land border.<sup>85</sup> The destruction or confiscation of mobile phones is particularly problematic. On the one hand, many asylum seekers have important personal data saved on these phones, helping them to identify themselves and substantiate their

<sup>79</sup> International Committee of the Red Cross, ‘Tragedy at Evros: A perilous river crossing to Greece’, 2017. [Online]. Available from: <https://reliefweb.int/report/greece/tragedy-evros-perilous-river-crossing-greece>.

<sup>80</sup> The Guardian, ‘12 people found frozen to death near Turkey’s border with Greece’, February .2022. [Online]. Available from:

<https://www.theguardian.com/world/2022/feb/02/turkey-accuses-greece-of-pushing-back-people-who-later-froze-to-death>.

<sup>81</sup> Case of Osman v. The United Kingdom, European Court of Human Rights, No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116; Case of Öneriyildiz v. Turkey (Judgment), European Court of Human Rights, App. No. 48939/99 (30 November 2004) para. 98.

<sup>82</sup> Communications Nos. 107/1981, Almeida de Quinteros v Uruguay, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

<sup>83</sup> See <https://www.icrc.org/en/document/tragedy-evros-perilous-river-crossing-greece>.

<sup>84</sup> Border Violence Monitoring Network. 2021. Annual Torture Report 2020. Available from: <https://www.borderviolence.eu/annual-torture-report-2020/>.

<sup>85</sup> Pro Asyl, ‘Pushed Back, Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border’, 2013. [Online]. Available from: [https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf), 29, 63; European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, ‘Report to the Greek Government on the visit to Greece’, April 2018. CPT/Inf (2019) 4. Available from: <https://rm.coe.int/1680930c9a>, para. 140.

reasons for asylum once they lodged their application for international protection. On the other hand, by taking away all electronic devices that may allow migrants to contact the outside world, they are expelled and abandoned to un-inhabited areas where people are unable to reach for support, either medical or legal, nor shelter or food.<sup>86</sup> Testimonies from 2017 and 2018 confirm that mobile phones are taken away upon arrest or at the secret detention facilities,<sup>87</sup> and in many cases are either not returned or thrown into the Evros/Meric river.<sup>88</sup> These practices during arbitrary detention, as explained above, contribute to them being held incommunicado as they cannot establish any contact to the outside world and, without being registered upon detention, are placed outside of the protection of the law.

The confiscation of phones also renders the documentation of pushbacks and other related rights violations by the migrants themselves extremely difficult. Furthermore, those who are left without phones at the Turkish riverside, cannot navigate the terrain anymore, which is one of the reasons for which they go missing, exposing them further to the aforementioned threats to their life, such as hypothermia.

Moreover, various incidents have been reported that indicate the intentional destruction of identity related documents of migrants. In early 2017, BVMN's network partner documented a testimony by an asylum seeker whose "white card", the international protection seeker's card issued by the Greek Asylum Office, had been destroyed by the Greek Police before being pushed back across the river.<sup>89</sup> Other testimonies referred to incidents where the birth certificate of a migrant was destroyed by the police in front of him, an essential document to support his family reunification claim,<sup>90</sup> or where the police burned the bags of a group in a bonfire,<sup>91</sup> thereby destroying original documents such as IDs and medical exams.<sup>92</sup>

**We submit that the deliberate confiscation and destruction of mobile phones of migrants, asylum seekers and refugees and documents proving the registration status of migrants, who are in a particularly vulnerable position with regard to the proof and recognition of their identity given the barriers or obstacles that may exist to the reproduction of identity-related documents, amounts to a serious violation of their right to recognition everywhere as a person before the law, as enshrined in Article 16 of the ICCPR.**

## **Conclusions**

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<sup>86</sup> CCPR General Comment No. 6, para. 5; CCPR General Comment No. 36, para. 21

<sup>87</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 6, 10, 11, 15.

<sup>88</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 16 and 26; Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, 14.

<sup>89</sup> Mobile Info Team, Annual Report 2018-2019, 'Evidence of Human Rights Abuse at the Greece/Turkey Border', November 2019, testimony 2. [Online]. Available from: <https://www.mobileinfoteam.org/testimony-2>.

<sup>90</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 16.

<sup>91</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 17 and 25.

<sup>92</sup> ARSIS, Greek Council for Refugees and HumanRights360, 'The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River', December 2018, 17.

Based on extensive documentation of violations related to pushback practices along the Evros/Meriç River, BVMN concludes that the widespread practice by the Greek state of holding refugees, asylum seekers and migrants including children, incommunicado, as well as practices of concealment, such as the confiscation and destruction of mobile phones and of documents proving the registration status of migrants, constitute one of the elements of the modus operandi of pushbacks in the region. This practice blatantly violates Greece's obligations under Articles 6, 7, 9, 10 and 16 read alone and in conjunction with Articles 2(3), and 24(1) of the ICCPR and, according to international law, amounts to short-term enforced disappearance. The arbitrary and secret detention of refugees, asylum seekers and migrants, including children, constitutes a compounded series of rights violations. This not only places them outside the law, but also subjects them and their family members to torture or cruel, inhuman or degrading treatment or punishment.

Furthermore, practices of expelling migrants across the Evros/ Meric river also constitute one of the core components of the modus operandi of pushbacks along the land border between Greece and Turkey, representing a flagrant violation of the prohibition of arbitrary expulsion of aliens, enshrined in article 13 of the ICCPR and the non-refoulement principle. Pushbacks deny migrants any individual examination of their cases and requests for international protection, access to interpreters and legal counsel, and leave them without redress for rights violations they have suffered, in violation of Article 2 of the ICCPR. These practices also prove discriminatory, often on the basis of race, in violation of Article 26 of the ICCPR.

Finally, the deliberate overcrowding of police vehicles and small inflatable boats, as well as the failure to investigate deaths, not only meets the threshold of torture or cruel, inhuman or degrading treatment or punishment, but also exposes refugees, asylum seekers and migrants to grave and foreseeable risk to their lives, in violation of articles 6, 7 and 17 of the ICCPR.