

European borders should be managed without pushbacks and human rights violation

Five
recommendations
to the European
Commission and
European
Parliament

**Policy
Recommendations**

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EU Member States have used pushbacks as a *de facto* border management tool, in addition to an **increased use of border fences, walls, and high tech** aimed at keeping those unwanted from crossing into their territory. Pushbacks are expulsions without legal justification and procedure, usually employed by border police, law enforcement officials or other authorities. They are being used to push foreigners such as migrants, refugees, and asylum seekers from a state's territory to the territory of another state without regard for the individual's circumstances and right to seek asylum.

Pushbacks are happening at the EU's internal and external, land and sea borders, as mere administrative measures or as violent practices, affecting refugees, migrants and asylum-seekers, including families as well as unaccompanied and separated children. The use of pushbacks at EU borders, and their human rights impact, is widely documented by many different actors, including by the **UN Special Rapporteur on the human rights of migrants**, the **UN Refugee Agency**, the **International Organization for Migration (IOM)**, as well as **human rights** organizations.

Danish Refugee Council (DRC) is part of the **Protecting Rights At Borders (PRAB)** Initiative, a cooperation of twelve protection and legal aid organizations focusing on human rights compliance at the EU's external and internal borders. PRAB has documented **28,609 pushback cases** from January 2021 until December 2023.

PRAB partners have well-established field presence in the countries of operation enabling direct access to victims of pushbacks as well as longstanding experience in strategic litigation. Of all pushback testimonies recorded by PRAB in 2023 (in total 5.081), 39% reported denial of access to asylum procedures, while 42% reported physical abuse/assault, 46% theft, extortion or destruction of property, and 63% abusive or degrading treatment.

The EU Pact on Migration and Asylum (the EU Pact) is unlikely to end pushback practices and rights violations at the EU's external and internal borders. The EU Pact outlines a disconnect between existing practices and required policies to effectively address ongoing rights violations. It should be recalled that pushbacks and rights violations at borders violate the EU asylum acquis as they are not legal under the currently applicable legal framework of the Common European Asylum System (CEAS) either. The discrepancies between policy and practice are partly caused by implementation gaps and lack of enforcement.

Danish Refugee Council's five recommendations for attention and action by the European Commission and European Parliament related to EU's border management

1

END PUSHBACKS. Stop using pushbacks as a de facto border management tool, both on paper and in practice. Pushback practice will only end if states deliberately decide to stop using them as a border management tool. When welcoming people at Europe's borders, the Member States must put rights and safeguards at the centre of their response. Resorting to pushbacks constitutes an illegal practice - regardless of whether or not these involve violence. Of course, states have the right to control movement across their borders. But all border control must take place in compliance with the Member States' obligations under international and European human rights law.

2

HUMAN RIGHTS. Ensure an effective and independent border monitoring mechanism and continue to monitor the monitor. The vast majority of unlawful practices takes place outside of official border crossings, police facilities, or formal procedures. Thus, the limited scope of the 'border monitoring mechanism', under article 10 of the Screening Regulation, make it de facto unable to monitor or prevent pushbacks, as the vast majority of unlawful practices takes place outside of official border crossings, police facilities, or formal procedures. Border monitoring mechanisms should further include actors with expertise in border monitoring, reporting and investigating of allegations of human rights violations. If the Member States fail to ensure a meaningful monitoring mechanism, it risks resulting in contradictory findings - evidence that pushbacks are not taking place (as they fall outside the reporting scope) as well as evidence that rights violations are effectively occurring. Consequently, mechanisms made purposely unfit for purpose that risk further politization and denial of rights violations should be prevented and meaningful monitoring (indeed, monitoring of monitors) should be adopted.

3

MEANINGFUL MONITORING. Ensure an effective and independent border monitoring mechanism and continue to monitor the monitor. The vast majority of unlawful practices takes place outside of official border crossings, police facilities, or formal procedures. Thus, the limited scope of the 'border monitoring mechanism', under article 10 of the Screening Regulation, make it de facto unable to monitor or prevent pushbacks, as the vast majority of unlawful practices takes place outside of official border crossings, police facilities, or formal procedures. Border monitoring mechanisms should further include actors with expertise in border monitoring, reporting and investigating of allegations of human rights violations. If the Member States fail to ensure a meaningful monitoring mechanism, it risks resulting in contradictory findings - evidence that pushbacks are not taking place (as they fall outside the reporting scope) as well as evidence that rights violations are effectively occurring. Consequently, mechanisms made purposely unfit for purpose that risk further politization and denial of rights violations should be prevented and meaningful monitoring (indeed, monitoring of monitors) should be adopted.

4

PATHWAYS TO JUSTICE. Accountability to potentially affected individuals should entail information about possible monitoring mechanisms, legal advice, effective access to justice for legal remedies, and transparency about possible investigations. As people are de facto pushed outside a territory, a physical barrier is often present to achieve access to justice. Victims further report destruction of evidence of their presence on the territory, aiming to erase traces and further complicate legal remedies. While the proposed paper trail under the Screening Regulation is presented as a guarantee against pushbacks, pushbacks have been taking place irrespective of any type of formal registration. There is no incentive for the Member States to document rights violations. Therefore, legal remedies to challenge the outcome of the screening procedure should be foreseen, as well as additional guarantees to investigate violations of fundamental rights perpetrated by the police, border guards, or other government actors, as those are often politically sensitive.

5

HUMANITARIAN ASSISTANCE. Border closures and a lack of access to services has increased humanitarian needs at border zones and therefore effective access to humanitarian assistance must be guaranteed and de-criminalized. Humanitarian aid provides lifesaving or emergency assistance to people most in need, based on the principles of humanity, neutrality, impartiality, and independence. Humanitarian aid should be allowed, also in borders zone or militarized zones. The root causes for the humanitarian crisis are irrelevant when assessing the need for delivery. Further, the criminalisation of actors providing humanitarian assistance at border areas - or more broadly to displacement affected populations - must end.