

de: border  
migration justice collective

**DE:BORDER | MIGRATION JUSTICE COLLECTIVE'S INITIAL COMMENTS IN VIEW OF  
THE COMMITTEE ON ENFORCED DISAPPEARANCES ELABORATION OF A NEW  
GENERAL COMMENT ON ENFORCED DISAPPEARANCES IN THE MIGRATION  
CONTEXT**

Submitted on 20 June 2022

*The de: border | migration justice collective is a group of scholar-activists mobilising law to resist and counter the systemic harms perpetrated against persons on the move, including those enshrined in and perpetrated through legal systems. Established in 2022, de: border's ongoing strategic litigation cases, complaints, research projects and investigations date back some five years. Our work challenges the normalization of border violence and pursue accountability and transformation of the rightlessness, discrimination and other socio-economic inequalities and injustices related to migration and its governance.*

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## Introduction

1. The de:|border migration justice collective welcomes the opportunity to provide the Committee on Enforced Disappearances (the Committee) with a submission in support of its development of General Comment 1 on enforced disappearances in the context of migration.
2. Our comments are based on our investigative and legal expertise as scholars, legal practitioners, investigative researchers and advocates. Over the past five years, members of our collective have developed and implemented several legal interventions in response to the ‘pushbacks’ and ‘pullbacks’ of migrants in the Central Mediterranean and at the Greek-Turkish land and sea borders. We have also conducted and continue to engage in litigation,<sup>1</sup> research<sup>2</sup> and legal advocacy<sup>3</sup> to further the application of the international law on enforced disappearances in the migration context. We collaborate with and legally represent asylum seekers, refugees and other migrants who have been intercepted, detained and denied protection, and then either expelled by State agents or returned by proxies to an unsafe country where they are exposed to disappearance.<sup>4</sup>
3. The present submission draws primarily on practices taking place in Greece and at the EU’s external borders between Greece and Turkey, as one of several locations where migrants are subjected to extreme forms of violence and where we undertake much of our relevant work. The submission is divided into four sections that comment on the following issues:
  - a) Non-discrimination, equality and equal recognition before the law;
  - b) The applicability of specific definitional elements of enforced disappearances in the migration context;
  - c) Direct and indirect practices and policies of disappearance in the migration context; and
  - d) Remedies, transnational cooperation and search and data infrastructure.

### A. Non-discrimination, equality and equal recognition before the law

4. The category of enforced disappearances is also applicable to many of the policies and practices implemented to prevent and reverse the unofficial entry of persons seeking international or other

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<sup>1</sup> Two of our members, Dr Valentina Azarova (University of Manchester) and Ms Amanda Danson Brown, are principal authors and co-counsel with Greek NGO HumanRights360 in [CCPR Case 4038-2021 FAA v Greece](#), registered with the UN Human Rights Committee on 5 November 2021. This is the first complaint before the Human Rights Committee arguing that the repeated, violent summary expulsion of the complainant from Greece amounts to an enforced disappearance.

<sup>2</sup> Dr Azarova and Ms Brown have also conducted academic research analysing the scope of application of the enforced disappearances framework to the migration context. See Valentina Azarova, Amanda Danson Brown and Itamar Mann, “The Enforced Disappearance of Migrants”, *Boston University International Law Journal* (forthcoming 2022; annexed).

<sup>3</sup> Members of the de:|border collective have also made submissions to the [UN Special Rapporteur on migrant rights](#) and to the [UN Fact-Finding Mission on Libya](#) documenting patterns of extreme group-based violence, some of which are to be properly understood as enforced disappearances.

<sup>4</sup> This includes, for example, individuals who are intercepted in the Central Mediterranean and forced back to Libya by the Libyan Coast Guard, to face a broad set of violations including secret detention, torture and trafficking; individuals who are expelled by Greek authorities or police auxiliaries to Turkey across the Evros River and Aegean Sea, and then exposed to chain refoulement to Syria in Turkey; etc.

forms of protection.<sup>5</sup> The Committee should account for the ways in which repressive border enforcement measures and anti-migration policies target migrants as a population group (who are forced to cross borders without prior authorization in order to seek international protection) on multiple discriminatory grounds (including race, colour, sex, language, religion, national or social origin, or other status), deploying extreme forms of violence that strip members of this group of their right to recognition before the law, with the purpose of repressing the social and political group-based ‘threat’ that migrants are politically constructed to represent.<sup>6</sup>

5. The repression of migration is pursued through the non-admission of those who arrive at the border and the expulsion of those who enter the State’s territory. Many individuals who have effectively entered a state’s territory are often unofficially criminalised for ‘illegal entry’ and subsequently, without due process, *de facto* punished by being denied equal recognition before and equal protection from the law. This includes denying access to the procedural rights and guarantees owed to all persons in state custody (e.g. registration and access to legal counsel), and the denial of access to asylum or other forms of protection, pending often clandestine summary expulsion.<sup>7</sup>
6. Since racialised groups of particular national origins are often disproportionately affected by the lack of available and accessible safe legal pathways for migration, and thus relegated to most precarious and life-endangering migration routes in order to attempt entry without prior authorisation, the Committee should make clear that the international prohibition on racial discrimination<sup>8</sup> is also relevant to this context.<sup>9</sup> While individuals who enter the territory of a State Party without prior authorisation – including in the absence of official procedures to enter for the purpose of seeking protection<sup>10</sup> – are more likely to be subjected to enforced disappearance, foreign tourists who possess identification documents but are part of racialised groups have also been subject to enforced disappearance (presumably on the basis that such documentation is perceived to be forged).

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<sup>5</sup> See, e.g., Committee on Enforced Disappearances, Concluding Observations on the Report submitted by Greece under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/GRC/CO/1 (12 April 2022). Relevant forms of protection include, where available, humanitarian protection and subsidiary protection.

<sup>6</sup> In the European context, see e.g., Jon Stone, [EU Accused of Adopting ‘Fascist Rhetoric’ With New Commissioner for Protecting Our European Way of Life to Oversee Immigration Policy](#), *The Independent* (10 Sep. 2019); Ursula von der Leyen, European Commission president, on a visit to the Evros region: “This border is not only a Greek border, it is also a European border ... I thank Greece for being our European *aspida* [shield] in these times”, in Jennifer Rankin, [Migration: EU praises Greece as ‘shield’ after Turkey opens border](#), *The Guardian* (3 March 2020). In the North American context, see e.g., DHS, [Homeland Threat Assessment October 2020](#) (labeling “illegal immigration” as one of the seven major threats facing the U.S.).

<sup>7</sup> Such unofficial policies continue to be implemented unofficially, even though the European FRA has repeatedly stated that such border enforcement practices are illegal: European Union Agency for Fundamental Rights, [Fundamental rights of refugees, asylum applicants and migrants at the European borders](#) (2020); U.N. Special Rapporteur on Migration, [Human rights violations at international borders: trends, prevention and accountability](#), U.N. Doc A/HRC/50/31 (26 April 2022).

<sup>8</sup> See, e.g., for the customary international law definition of racial discrimination, Article 1, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

<sup>9</sup> See, e.g., on why certain racialised groups are more likely to attempt these types of border crossings, and on the racial implications of the European visa regime, Ryszard Cholewinski, “Borders and Discrimination in the European Union,” ILPA/Migration Policy Group (2002). See also U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Report on racial discrimination and emerging digital technologies](#), U.N. Doc. A/75/590 (10 Nov. 2020).

<sup>10</sup> European Union Agency for Fundamental Rights, [Fundamental rights of refugees, asylum applicants and migrants at the European borders](#) (2020). See further Case C-638/16 *PPU X and X v État belge* [2017] ECLI:EU:C:2017:173. [Amendments proposed in 2016](#) by the European Parliament calling on Member States to use any existing possibilities to provide humanitarian visas, particularly for vulnerable persons (notably at Union embassies and consular offices in origin or transit countries) were withdrawn in September 2017 due to the Commission and Council’s opposition to including provisions for a humanitarian visa.

7. The Committee should make clear that structural discrimination is often a cause or factor conditioning and contributing to violations of the right not to be subject to an enforced disappearance. Further, the Committee should recognize that racial discrimination can also be the immediate trigger from which the act of enforced disappearance follows. Reports have routinely indicated that summary expulsions from within countries like Greece and Croatia have commenced with an incident of racial profiling by police officers, after which the affected individual is arbitrarily apprehended, detained and expelled from the country.<sup>11</sup> Racial discrimination is therefore of concern both as a systemic foundation for the disparate exposure of racialised groups to enforced disappearance in the migration context, as well as an acute trigger for increased vulnerability to enforced disappearance through acts of racial profiling.
8. The Committee should therefore ensure, in accordance with its and other treaty bodies' commentary and jurisprudence, that the principles of non-discrimination and the rights to equality before the law and to equal protection from the law<sup>12</sup> inform the new General Comment and are clearly analysed at the outset as an underlying cause and factor of in/direct disappearances in the migration context. This should include clarifying that the rights of due process and access to asylum are fundamental and cannot be denied to those who may otherwise be criminalised for 'illegal entry'.

## **B. Applicability of definitional elements of enforced disappearance in the migration context**

### ***I. Deprivation of liberty against the will of the person through their arrest, detention, abduction and the execution of deportation procedures***

9. A person is deemed to be in detention when they are under the exclusive and primary control of the state. In a 2017 report, the UN WGEID held that this includes the execution of deportation procedures by state agents, which may not otherwise entail a significant duration of time spent in detention.<sup>13</sup> The actors involved in, and the form and duration of instances of deprivation of liberty that take place during the different types of direct and indirect enforced disappearances in the migration context, require certain clarifications from the Committee.
10. The Committee should make clear that the definition of deprivation of liberty equally extends to situations where individuals are under the *indirect* control of the state, such as when they are in control of non-state actors that act with the authority or acquiescence of the state. Secondly, as others have noted,<sup>14</sup> the limited quantitative duration of such instances of deprivation of liberty is less significant than the fact that qualitatively the state can deprive the person of their due process

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<sup>11</sup> See, e.g., *FAA v Greece* arguing, *inter alia*, that Greece violated ICCPR Article 26, in conjunction with Article 2, where Greek police's racial profiling of the applicant and discriminatory treatment based on his Syrian nationality. See also, Lorenzo Tondo, [Nigerian students deported from Croatia had visas to stay](#), *The Guardian* (13 Dec. 2019).

<sup>12</sup> See, *inter alia*, Committee on the Elimination of Racial Discrimination, [General Recommendation 30, Discrimination against Non-citizens](#) (Sixty-fourth session, 2004); Human Rights Committee, [General Comment 18, Non-discrimination](#) (Thirty-seventh session, 1989); Human Rights Committee, [General Comment 23, Rights of Minorities](#), U.N. Doc CCPR/C/21/Rev.1/Add.5 (1994).

<sup>13</sup> Hum. Rts. Council, [Rep. of the Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration on Its Thirty-sixth Session](#), ¶ 23, U.N. Doc. A/HRC/36/39/Add.2 (2017).

<sup>14</sup> Grażyna Baranowska, [Disappeared Migrants and Refugees](#), *German Institute. for Human Rights* 10 (2020), p 16.

rights during this short period of time, in a manner that decisively strips them of their protection by the law – i.e. by denying them the possibility of an effective remedy which could be otherwise accessed if their deportation were challenged or halted, and consequently denying them access to asylum or other protection procedures. The Committee should clarify that irrespective of the length of time a person is held by a state agent, or by non-state actors with the authority or acquiescence of the state, the significance of the loss of protection from the law and its consequences should motivate the inclusion of such situations in the definition of being in state custody.

11. The Committee should extend, *mutatis mutandis*, the protections bestowed on persons in the state’s custody to those who are abandoned and endangered by the state while crossing vast borderlands which are rendered hostile by physical and natural elements, resulting in situations that cause and condition their injury, death and disappearance. Such persons are left to disappear and die through state action or omission, while under the exclusive, direct or indirect, control of the state.<sup>15</sup> The effects of the underlying border governance policies in conditioning and causing these disappearances trigger states’ obligations to investigate, search and recover remains of individuals affected by their actions and omissions and to prevent the recurrence of such effects.

## ***II. Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person***

12. Several EU border states, such as Greece and Croatia, have assumed the position of factual and legal denial in relation to their agents’ involvement in violent, summary expulsions, maintaining that their border forces are engaged only in legitimate forms of border enforcement through interception and ‘prevention of departure’.<sup>16</sup> However, in these two states, individuals who enter the territory to seek asylum or other forms of protection are routinely apprehended and expelled without record of their detention or deportation.<sup>17</sup> The Committee should take the view that such acts would constitute serious systemic violations of the State Party’s obligations to ensure that all persons deprived of their liberty be recorded and provided with access to the rights attendant to all persons in state custody (including under Articles 17 and 22 of the ICPPED).
13. Domestic remedial processes in European states that deny their engagement in summary expulsions have diluted and deflected all factual and legal allegations of such acts. On repeated occasions,

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<sup>15</sup> One indication of a relatively broad interpretation of ‘deprivation of liberty’ is Article 5 of the European Convention on Human Rights, under which “[a] deprivation of liberty is not confined to the classic case of detention following arrest or conviction, but may take numerous other forms” beyond movement restrictions. See Registry of Eur. Ct. H.R., [Guide on Article 5 of the European Convention on Human Rights: Right to Liberty and Security](#) (2021) 8.

<sup>16</sup> See e.g. the first report by the National Transparency Authority (NTA) Inspectors-Auditors Unit concluding that there is no evidence of ‘pushbacks’ by Greece: Kathemerini, [Greek independent authority rejects migrant pushback claims](#) (30 March 2022). It was also recently revealed that Frontex’s own reporting system has been misclassifying independently documented summary expulsions in which Frontex forces participated as benign instances of ‘prevention of departure’: Lighthouse Reports, [Frontex, the EU Pushback Agency](#) (6 May 2022).

<sup>17</sup> On Greece, see, e.g., Greek Ombudsman, [Καταγγελλόμενες επαναπροωθήσεις στην Τουρκία αλλοδαπών που είχαν εισέλθει στην Ελλάδα αναζητώντας διεθνή προστασία](#) (in Greek; ‘Interim Report - Alleged deportations to Turkey of foreigners who had entered Greece seeking international protection’) (updated 31 Dec. 2020); Greek Council for Refugees, [Country Report: Overview of the main changes since the previous report update - Greece](#) (30 May 2022). On Croatia, see, e.g., Croatian Law Center, [Country Report: Access to the territory and push backs – Croatia](#) (22 April 2022); Border Violence Monitoring Network, [The Black Book of Pushbacks: Volume II](#) (2020).

domestic courts, prosecutors and other bodies have closed such cases on procedural or substantive pretexts. Despite international and regional bodies having made determinations that these practices by various border forces have been widespread and ongoing, and despite such acts being manifestly illegal under these countries' domestic laws, neither proper internal investigations by security units, nor disciplinary proceedings against security personnel, let alone investigations of the underlying unofficial policies, have been triggered.<sup>18</sup> The Committee should clarify that such systemic patterns of factual concealment and denial of such acts necessarily preclude the recognition of their severe illegality and result in the obstruction of justice by rendering remedies in said domestic jurisdictions inaccessible and moot.

14. Greece, for instance, has consistently denied, in many cases, the very fact that migrants continue to enter Greece by land and sea, while referring to its border enforcement operations that entail illegal abductions and expulsions as 'interceptions' or 'prevention of entry'. The Committee should clarify that such practices are a systemic form of concealment and denial in the context of policies of direct and indirect enforced disappearances, discussed below. The Committee should account for the fact that some State Parties like Greece maintain 'unofficial'<sup>19</sup> policies and practices of clandestine summary expulsion (i.e. without an institutional paper trail) that state agents presumptively apply to all persons arriving on their territory without authorisation.<sup>20</sup>

15. In sum, the Committee should recognise the following four situations in which the whereabouts and fate of a missing migrant can become unknown as a result of actions or omissions of a State Party that conceal or deny their fate:

1) when their presence on the State Party's territory is (remotely) detected with the potential of being interdicted, but the person is instead abandoned to the elements of nature, especially in locations in which the State exercises exclusive control over physical access or emergency rescue operations;<sup>21</sup>

2) when the state's choice to follow unofficial procedures results in the failure to register a person's arrival, detention or deportation, resulting in their cutting of contact with and erasure from the outside world;<sup>22</sup>

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<sup>18</sup> See e.g. the Greek Ombudsman Office [report](#) on police brutality and internal investigations by the Hellenic Police, which alleges that there is (a) an unwillingness to investigate reports of police brutality and (b) an unwillingness to allow the Office of the Ombudsman to provide its assessment prior to the Police's closure of a case or internal investigation.

<sup>19</sup> See e.g., Amnesty International, [Greece: Violence, Lies and Pushbacks](#) (2021).

<sup>20</sup> See its latest denial of such practices in its dialogue with the Committee, Comm. on Enforced Disappearances, [In Dialogue with Greece, Experts of the Committee on Enforced Disappearances Ask about Detention and Disappearances of Migrants and Asylum Seekers, including Unaccompanied Minors](#) (29 March 2022).

<sup>21</sup> In the context of the U.S.-Mexico border, and the disappearance of thousands of people in the Sonoran Desert borderlands following the introduction of U.S. policies such as the 1994 Prevention Through Deterrence framework, see, e.g.: James Verini, [How U.S. Policy Turned the Sonoran Desert into a Graveyard for Migrants](#), New York Times Mag. (22 November 2020); No More Deaths & La Coalición de Derechos Humanos, [Disappeared: How the U.S. Border Enforcement Agencies are Fueling a Missing Migrants Crisis; The Disappeared Report Part I: Deadly Apprehension Methods: The Consequences of Chase & Scatter in the Wilderness](#), and [The Disappeared Report Part II: Interference with Humanitarian Aid: Death and Disappearance at the US-Mexico Border](#); Geoffrey Alan Boyce & Samuel Norton Chambers, *The Corral Apparatus: Counterinsurgency and the Architecture of Death and Deterrence Along the Mexico/United States Border*, 120 *Geoforum* 1, 2 (2021); Jason De León, *The Land of Open Graves: Living and Dying on the Migrant Trail* 274 (2015). In the context of the Greece-Turkey border, see, e.g., Ifor Duncan and Stefanos Levidis, [Weaponizing A River](#), e-flux (April 2020).

<sup>22</sup> In the context of the U.S. immigration detention system, see, e.g., No More Deaths & La Coalición de Derechos Humanos, [The Disappeared Report Part III: Left to Die: Border Patrol, Search and Rescue, and the Crisis of Disappearance](#).

- 3) after a person has been clandestinely expelled to another state where they risk being subject to ‘chain refoulement’ and subsequent enforced disappearance; and
- 4) when the State Party authorities refuse to provide information on detainees or to engage in searches for remains, while implementing unofficial policies of endangerment and abandonment that result in large-scale disappearance.

### *III. The consequence of removing the person from the protection of the law*

16. We invite the Committee to capture the various ways in which a State Party’s actions or omissions can result in a person’s loss of protection from the law:

- 1) when they are exposed to harsh, life-endangering elements of nature<sup>23</sup> and intentionally denied assistance by state agents, who often otherwise survey their movement and are the only ones in a position to assist them (while other forms of support are criminalised)<sup>24</sup>;
- 2) when they are apprehended and placed in secret and/or incommunicado detention without registration of their arrival or custody, resulting in the routine denial of due process rights (including access to legal counsel and appeal avenues against their detention);
- 3) during the unofficial execution of deportation procedures against an individual in custody, without an opportunity to challenge or appeal a removal decision;
- 4) when clandestine expulsion results by default in the outright denial of access to asylum procedures; and
- 5) when deportation results in refoulement with an increasing risk of ‘chain refoulement’ to a place such as Syria or Libya where the person is likely to be enforcedly disappeared (prohibited under Article 16 of the ICPPED).<sup>25</sup>

17. We also urge the Committee to take note of and explicitly condemn the subset of illegal expulsions of persons who are apprehended from public thoroughfares while being lawfully present, and whose documentation is then revoked by security personnel during their detention and summary expulsion, *de facto* stripping the individual of their status in the EU.<sup>26</sup> The clandestine expulsion of a person with ‘legal’ status makes the disappearance a particularly egregious ‘authoritarian’ form

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<sup>23</sup> Ibid.

<sup>24</sup> See, e.g., United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, [Report on means to address the human rights impact of pushbacks of migrants on land and at sea](#) (12 May 2021), U.N. Doc A/HRC/47/30; OHCHR, [Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea](#) (2021); European Union Fundamental Rights Agency, [December 2021 Update – Search and Rescue \(SAR\) operations in the Mediterranean and fundamental rights](#) (2021).

<sup>25</sup> Amnesty International, [Turkey is Illegally Deporting Syrians into War Zones](#) (25 Oct. 2019); Human Rights Watch, [Turkey: Mass Deportations of Syrians](#) (22 March 2018); Amnesty International, [Syria: Former refugees tortured, raped, disappeared after returning home](#) (7 Sep. 2021).

<sup>26</sup> See, e.g., John Washington, [‘I Didn’t Exist’: A Syrian Asylum-Seeker’s Case Reframes Migrant Abuses as Enforced Disappearances](#), *The Intercept* (28 Feb. 2021) (regarding the expulsion of a man of Syrian origin, who had been granted EU protection and holding a German travel document, from the Evros region into Turkey); Dimitris Angelidis, [Return Without... Ticket](#), EFSYN (19 Oct. 2017) (regarding the expulsion of a different man of Syrian origin, who had also been granted EU protection and holding a German travel document, from the Evros region into Turkey); Matina Stevis-Gridneff, [E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup](#), *The New York Times* (01 Dec. 2021) (regarding the expulsion from Greece to Turkey, of a man of Afghan origin, with legal residency in Italy, following his apprehension by police on a bus between Evros and Thessaloniki, while he was employed by Frontex).

of abuse of power which causes the loss of the protection of the law in relation to a host of rights, e.g. the rights to movement and family life.

### **C. Policies and practices that directly or indirectly cause and condition enforced disappearance**

18. We urge the Committee to enjoin states from implementing often unofficial policies of deterrence that result in direct or indirect enforced disappearances, including by clandestinely apprehending and expelling migrants or by subjecting them to life-endangering conditions on their territory. We invite the Committee to condemn State Parties' policies that intentionally or recklessly expose migrants to life-threatening circumstances, including by utilising aspects of the hostile natural environment<sup>27</sup> and physical and surveillance infrastructure to direct their movement through certain dangerous corridors, thus conditioning and causing routine injury, death and disappearance. The effects of such policies are often aggravated by the exclusion (and criminalisation) of humanitarian actors from such borderlands, where migrants are under indirect state control exclusively, such as in the Evros region where public access is restricted or at sea within an operative Search and Rescue (SAR) zone where a state is obligated to respond to distress calls.<sup>28</sup>
19. We urge the Committee to treat such practices of so-called 'deterrence' as forms of collective punishment and reckless endangerment that induce and condition enforced disappearance, and to clarify when such policies and practices of unprotection and abandonment implemented in vast borderlands would constitute an *indirect* policy of enforced disappearance.<sup>29</sup> The Committee should ensure that State Parties' obligations to prevent enforced disappearances also require them to actively remedy such life-endangering environments (Articles 23 and 25), investigate and punish superior officials (Articles 6, 10, 12) involved in perpetrating these harms, and undertake systematic searches and exhumations to recover and repatriate remains of those who disappear in their territory (Article 15).
20. We also urge the Committee to acknowledge and explicitly condemn practices of *direct* enforced disappearances. For example, in Greece, such policies and patterns include:
  - a. Interceptions in Greek territorial waters: authorities routinely use physical force and violence (e.g. physical beatings, damaging the motors) to interdict dinghies carrying asylum seekers and other migrants and then transfer the individuals onto state vessels, where their phones and other personal belongings are typically confiscated. Officials then forcibly transfer the individuals onto inflatable, motorless rafts, drag them out to sea and leave them to drift (often in the middle of the night, without any means of communication

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<sup>27</sup> See, e.g. Duncan and Levidis, [Weaponizing A River](#), e-flux (April 2020).

<sup>28</sup> The removal and destruction of personal belongings including mobile phones after apprehension of migrants on Greek territory and before their expulsion also denies them the means to call for help after their expulsion.

<sup>29</sup> See, e.g., Geoffrey Alan Boyce & Samuel Norton Chambers, *The Corral Apparatus: Counterinsurgency and the Architecture of Death and Deterrence Along the Mexico/United States Border*, 120 *Geoforum* 1, 2 (2021).



or navigation. In some cases, individuals have been thrown directly into the sea, without being put on life rafts.<sup>30</sup>

- b. Abductions from Greek islands and the Evros region: authorities routinely apprehend newly-arrived asylum seekers and other migrants from public locations in cities or camps – sometimes on a fraudulent basis, such as the false pretext of requiring their transfer to a facility for COVID testing or quarantine. The individual is then detained incommunicado and later clandestinely expelled. During detention and expulsion, the individual is often subjected to actions and conditions that may amount to torture or inhuman and degrading treatment.<sup>31</sup>

#### **D. Remedies, transnational cooperation and search and data infrastructure**

21. We invite the Committee to call on states, regional and international bodies to establish and adequately resource dedicated legal and physical family-facing data infrastructure for tracing, identification and repatriation of remains of missing migrants, including laws, bylaws, protocols and procedures.<sup>32</sup> States whose borders are crossed frequently should be required to design and implement search missions and exhumations, and mandated to establish dedicated procedures for transnational interstate cooperation with bordering and origin states to communicate with families of the disappeared and to ensure the prompt identification and return of remains to families. The Committee should expressly condemn the failure of states to trigger and appropriately carry out criminal investigations amidst the mass disappearance of racialised groups and migrants in Europe and along its borders, emphasising, as noted, that the Convention must be implemented without discrimination and that its protections must apply to all migrants and their families.
22. Given the widespread denial and concealment of such acts by certain State Parties, the Committee should emphasise the importance of operationalising the right to report an enforced disappearance outside the state in which it occurred (Article 12), and of transnational cooperation and mutual assistance between countries and international organisations (Articles 14 and 15). We invite the Committee to clarify the interactions between the search obligations under the Convention and those found in the UN Global Compact for Migration and the EU Pact on Migration and Asylum.
23. The Committee should urge states to adopt standardised and harmonised transnational cooperation-based approaches to searches, identifications and repatriations. The Committee should also review existing transnational initiatives on missing persons, such as the [Amber Alert Network](#) and ongoing efforts by four International Committee on Missing Persons (ICMP) Member States to establish national ‘focal points’ for the tracing of missing migrants, with a view to promoting and ensuring

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<sup>30</sup> Lighthouse Reports, [Aegean Pushbacks Lead to Drowning](#) (17 Feb. 2022); Human Rights Watch, [Greece: Investigate Pushbacks, Collective Expulsions](#) (16 July 2020); Legal Centre Lesbos, [Crimes against Humanity in the Aegean - Greece](#), ReliefWeb (1 Feb. 2021).

<sup>31</sup> Vincent Wood, [Greek ‘pushbacks’ brought to European Court after child refugees ‘towed out to sea and abandoned on raft’](#), The Independent (4 March 2021).

<sup>32</sup> Most European domestic jurisdictions do not have provisions, procedures or mechanisms specific to missing migrants.

the full implementation of State Parties' obligations under the Convention as regards missing migrants (especially Articles 12, 14-15, 24-25).<sup>33</sup>

24. We invite the Committee to clarify the role and obligations of international organisations, including the International Committee of the Red Cross (ICRC) and the International Organisation for Migration (IOM), as well as regional bodies such as those of the EU and Council of Europe. We encourage the Committee to obligate European regional bodies to pursue the establishment of a transnational tracing mechanism that would fully operationalise the investigative and interstate cooperation obligations in the Convention, with the participation of affected communities, civil society, migrants' countries of origin and independent experts, and reflecting lessons learned from the transnational mechanism established in Mexico in 2015 (Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación).<sup>34</sup> Cooperation frameworks between international organisations and states to which migrants are illegally expelled, e.g. Turkey and Libya, should be mobilised to ensure that state authorities register and collect information from individuals after their expulsion or interdiction.

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<sup>33</sup> See, e.g., ICMP, [Cyprus, Greece, Italy and Malta Meet at ICMP For the 2nd meeting of the Joint Process on Accounting for Missing Migrants](#) (13 June 2019).

<sup>34</sup> See e.g., Gabriella Citroni, *The First Attempts in Mexico and Central America to Address the Phenomenon of Missing and Disappeared Migrants*, 99 Int'l Rev. Red Cross 735, 747, 748-49, 752 (2017).