



Submission to the UN Special Rapporteur on the human rights of migrants' report on the 'phenomenon' of missing migrants

joint submission by

de:borde // migration justice collective and Legal Centre Lesvos

The [Legal Centre Lesvos AMKE](#) ("LCL"), is a civil non profit organisation registered in Greece, which, since 2016, provides free and individual legal support to migrants who arrive by sea on Lesvos. LCL advocates to advance migrants' rights, for the freedom of movement and the equal access to safe and legal routes of migration in Greece, Europe and globally. As part of local and international movements, LCL works towards structural changes through legal advocacy and strategic litigation efforts to hold perpetrators and accomplices of human rights violations at the borders to account.

[de:borde // migration justice collective](#) ("de:borde") registered as a non-profit in the Netherlands, is a group of researchers, practitioners and scholar-activists, mobilising with/in and against law to resist and counter the violence of physical and other borders, including those embedded in and reproduced by legal systems. We pursue accountability and transformation of the systems of oppression that produce global immobility and rightlessness by engaging in political and legal interventions, collaborative action-research, and embodied co-learning. Centring movement lawyering, critical and trauma-informed practice, and (trans)feminist leadership, we are committed to pursuing healing, decolonial and transformative justice and reparations for the systems that deny the freedom of, and dignity in, movement.

Introduction

1. This joint submission is based on the work of Legal Centre Lesvos and de:border // migration justice collective in Greece and along Europe's external/ised borders, with a focus on death and disappearances since at least 2018—including accompaniment of families searching for loved ones, identification and repatriation of recovered remains, and advocacy to further the responsible implementation of relevant legal and policy frameworks. Our organisations have contributed to the UN Committee on Enforced Disappearances's (CED) elaboration of its General Comment 1 (GC 1),¹ and de:border is part of COST Action CA22106, '[Migrant Disaster Victim Identification \(MDVI\)](#)'.
2. This submission is based on our collaboration with other lawyers, organisations providing legal aid, and support groups accompanying families in Greece and across Europe. Given the word-limit and to enable publication, we focus on the patterns that we have identified in our work. We would welcome the opportunity to hold further exchanges with the UNSR team, including to provide specific examples of the patterns described in the submission.

A. Data on missing and/or disappeared migrants

3. Our organisations do not systematically monitor and collect statistics, nor would we be able to do so given the structural restrictions in place in Greece on access to information about border crossings and to border areas and migrant detention facilities for humanitarian and legal actors. Such measures are accompanied by criminalisation of search and rescue and humanitarian actors,² criticised by the Council of Europe and UNSR on human rights defenders amongst others,³ that have resulted in the closure of virtually all humanitarian operations at sea and at landing points.⁴
4. This reality is combined with one of systemic policies of 'pushbacks' that leave 'illegalised' border crossers unregistered, unprotected and abandoned in militarised borderlands without access to life-saving supplies—ultimately resulting in their clandestine arrest, secret and incommunicado detention, and removal from protection by criminal or administrative procedural guarantees (including legal representation). These measures are intended to enable state authorities to systematically conceal and

¹ de:border and Legal Centre Lesvos, [Comments on the Committee on Enforced Disappearances draft General Comment 1 on Enforced Disappearances in the Context of Migration](#) (15/06/2023); de:border, [Initial Comments in View of the Committee on Enforced Disappearances' Elaboration of a New General Comment on Enforced Disappearances in the Migration Context](#) (20/06/2022).

² Including through its prohibition under Greek law 4825/2021. Vouliwatch, Greek Council for Refugees, HIAS Greece, Refugee Support Aegean, Hellenic League for Human Rights and Reporters Unite, [Greece in Institutional Decline - Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report](#) (January 2024) p.46-47.

³ Council of Europe Commissioner for Human Rights, [Greek authorities should reverse the trend undermining the work of human rights defenders and journalists](#) (12/01/2023); UN Special Rapporteur on human rights defenders, [Greece: Guilty verdict for migrant rights defenders could mean more deaths at sea – UN expert](#) (18/11/2021).

⁴ Greek Law 4825/2021, Art. 40(1), provides that NGOs and Civil society actors may operate in an area under the authority of the Coast Guard, *inter alia*, under the conditions that it is not possible for the Hellenic Coast Guard to act, that the said actors have informed the competent Port Authorities and were granted written approval.

deny such actions, suppressing transparency and obstructing public accountability efforts by civil society actors and international organisations (see Section D).

5. Statistics on missing and disappeared migrants at the Greek-Turkish borders are nonetheless collected by IOM and UNHCR, though they are based predominantly on information provided by states, with limited information from independent sources.⁵ We have sought to critically engage with the mandates and role of international organisations such as IOM and its Missing Migrants project, UNHCR, and the ICRC, who are in different ways capable of collecting information that states do not (make public), and of condemning the ways states regularly obstruct the collection of information through misrepresentations and denial of access to information.
6. In addition to data about migrant deaths and disappearances, some data is collected about 'searches' initiated by family members and loved ones. The ICRC, for example, operates the '[Trace the Face](#)' and the 'Restoring Family Links' programmes (though neither Greece nor Turkey are 'participating countries' in the former). In theory, searching family members can submit complaints from any country, but there is no information about the search process. Most cases do not receive a response for years. Such 'searches' are different from a police complaint, and do not *per se* trigger national authorities' domestic law obligations to search for a missing person. Much more transparency and public accountability around the relationship between 'searches' and investigations is needed to ensure that the ICRC's or other international organisations' (e.g., International Commission on Missing Persons' (ICMP) efforts described in Section F) programmes do not legitimise the current reality of lack of searches and support to families in Greece and elsewhere.

B. Cases of enforced disappearances

7. The CED's GC, to the elaboration of which we have contributed, recognises the direct and indirect ways in which the state contributes to creating and maintaining conditions that produce enforced disappearances of migrants. To effectively implement the CED's GC, it is important that the definition of enforced disappearances is broadly understood to account for the *systemic* realities of un/official policies that result in *en masse* abandonment, unprotection and endangerment—as opposed to individuating each case of disappearance and examining it through the lens of neglect and/or recklessness. The GC maintains that such systemic policies create a presumption that persons who disappear in certain circumstances (without the 'disappeared' needing to be, *stricto sensu*, in state custody) are likely to have been enforcedly disappeared. As such, both *direct* 'pushbacks' involving the secret arrest and detention (even for a few hours, as confirmed by the CED) and *indirect* disappearances resulting from border policies of abandonment, unprotection and endangerment, trigger at a minimum the state's procedural responsibilities to investigate the person's fate and whereabouts.

⁵ According to IOM data, [Missing Migrants project](#), 119 missing and dead migrants who tried to cross in Europe through the Eastern Mediterranean route, were recorded in 2024. Among the missing and dead migrants were 16 male and 21 female, while the sex of the remaining 82 remains undetermined. The total number of children was 25.

8. Policies of 'pushbacks' at the EU's external land and sea borders in Greece are systematic and increasingly violent.⁶ There is a rise in incidents involving migrant boats capsizing while being chased by vessels of the Hellenic Coast Guard ("HCG"), use or threat to use firearms and instances of severe physical assaults. Some recent examples include: eight migrants killed resulting from their endangerment and collision with a rocky island during a 'pushback', in July 2024⁷; HCG fired at a migrant boat killing one person in August 2024⁸; and a person was killed by non-rescue during a capsizing induced by an HCG chase in September 2024.⁹
9. Given the inherently clandestine nature of 'pushbacks', the fatal impacts of these aggressive tactics are also systematically denied and concealed. It is therefore difficult to determine the exact number of lives lost and often results in the intentional refusal to rescue/recover remains, even when their location is known and they are readily accessible.¹⁰
10. Greek authorities have routinely refused to initiate investigations of such cases. Longstanding efforts to seek remedies by civil society, since at least 2018 and including by our organisations, have been structurally obstructed and denied (see more in paras 15 onwards). Due to the absence of effective remedies in Greece, our organisations are legally representing cases that are pending before the European Court of Human Rights and UN Human Rights Committee, including the cases of [F.A.A. v Greece](#),¹¹ [S.A.A. v Greece](#) and [H.T. v Greece](#)—clear cases of direct enforced disappearance through abduction and removal of the persons from the protection of the law through clandestine seizure documents, secret detention, and deportation by state agents.

C. Root causes of migrant disappearances

11. We respectfully challenge the framing of migrant disappearance as a *phenomenon*, as noted in the SR's call. This framing perpetuates the naturalisation of disappearances as a complicated multifactorial reality in which accidents occur due to the inherent risks of illegalised border crossings. It also fails to capture the in/direct causal links between states' policies and the production of disappearances through the creation and maintenance of certain conditions. At the EU's borders in Greece, these border policies include the continuous militarisation of infrastructure, equipment, and personnel;¹²

⁶ Between July and September 2024, at least 2,972 people were subjected to illegal pushback operations in the Aegean Sea alone, including 145 documented incidents. [Republic of Turkey Ministry of Interior - Turkish Coast Guard Command, Latest Activities.](#)

⁷ Alarmphone, [We are with the local police, do we have to be afraid?": 8 people killed by Hellenic Coast Guard](#) (30/07/2024).

⁸ InfoMigrants, [Migrant shot dead by Greek coast guard in Aegean Sea](#) (26/08/2024). See also, Aegean Boat Report, [Greece's 'Coastguard' Firing On Civilians.](#)

⁹ InfoMigrants, [Greece: One migrant dies and 30 rescued off Samos](#) (18/09/2024).

¹⁰ Legal Centre Lesvos, [Lesvos Situation Report - Quarterly Developments and Updates July - September 2024](#), p.5.

¹¹ de:border // migration justice collective, [F.A.A. v Greece: Illegal expulsions and enforced disappearance at Evros](#) (updated May 2024).

¹² As of January 2022, [according to the European Commission](#), Greece's migration management policies had already benefited from 3.39€ billion in EU funding since 2015, including 450€ million from the Internal Security Funds, out of which 112.5€ million were directly allocated to Greek authorities and 17.5€ million to international organisations and Union agencies, including Frontex.

normalisation of violence against migrants during ‘pushbacks’, including chases and interceptions; and policies of non–rescue or delayed rescue of migrant boats, even in acute distress situations.

12. Properly understood, disappearances are themselves a border control strategy of deterrence. Part of violent, inherently discriminatory and racialising border policies, such tactics aim to prevent movement of racialised persons, making illegalised border crossers invisible *to* legal systems (*through* the law) resulting in the *en masse* removal of illegalised border crossers from recognition and protection by law.
13. Policies of collective expulsion in Greece entail the *de facto* deprivation of migrants’ identities—legally and relationally—by law enforcement authorities who commonly seize migrants’ mobile phones, money, and identity papers, deliberately aggravating their condition of endangerment and unprotection during ‘pushbacks’, and denying their ability to reconnect with loved ones.
14. In sum, since the root causes of disappearances are structural factors that are part of, or can be linked to, state border policies and that need to be actively redressed as such by states and international organisations, reparations for the (enforced) disappearance of migrants require a constitutive political act of recognition of the systemic root causes of such mass and structural violence as perpetrated by current border policies.

D. Obstacles in existing national, regional, and international legal and policy frameworks creating risk of migrants going missing and/or being disappeared

15. The main obstacles in existing national, regional, and international legal and policy frameworks hindering access to any form of justice and accountability, let alone to guarantees of non-repetition, are structural and relate to a plurality of factors, including: lack of accountability and transparency; systemic practices of denial and concealment of violence (see Sections B and F); and structural barriers to the investigation and remediation of such acts even through the wholly inadequate individuating/exceptionalising forms of ‘justice’ e.g. criminal prosecution (see Section C). Such state actions—and policies that result in such omissions—cause harm not only to deceased persons, but also their families and loved ones.
16. Many state policies of disappearance at borders are decisively enabled by policies of obstruction and refusal to investigate border deaths, including the active tampering with and concealment of relevant evidence of deaths and disappearances at borders.¹³ These are part of systematic patterns of outright denial and institutionalised concealment (e.g., clandestine border operations without any institutional paper trail) of border violence by national authorities, as is the case in Greece. The systemic refusal to conduct proper and prompt registration of ‘arrivals’ in Greece is the first step in removing migrants’ from protection by law and invisibilising and erasing their presence in Greek territory.¹⁴ This critically enables state authorities to deny that any

¹³ See e.g., FRA, [Guidance on investigating alleged ill-treatment at borders](#) (July 2024).

¹⁴ For instance, in our experience, groups of asylum seekers who reach out to Greek authorities and civil society actors upon arrival on the Aegean islands are routinely left without any assistance and remain unattended for hours or even days, exposing them to imminent risks to their health and lives,

‘irregular’ entry, let alone (unlawful) removal, had taken place, and to close or ‘archive’ investigations on this basis.

17. An example is the case of an Afghan woman separated from her husband upon arrival in Lesbos, while he was subject to a ‘pushback’ to Turkey, accompanied by LCL. After being brought to the ICRC’s Restoring Family links programme and the Mytilene police, the woman was called to testify before the prosecutor, but with no further action taken by the authorities. The husband’s whereabouts and fate remained unknown between November 2022 and August 2023, until he managed to ‘irregularly’ return to Lesbos and reunite with his family.
18. Official Greek statistics released in February 2024, reveal that since 2020 Public Prosecutors (Εισαγγελείς Πρωτοδικών) have examined at least 79 cases of alleged ‘pushbacks’, without any of these resulting in prosecutions.¹⁵ Statistics released in August 2024 show that no charges have been brought by Public Prosecutors against Hellenic Police officers,¹⁶ and that out of 125 cases involving the HCG investigated between January 2019 and October 2024, 106 were archived without action, 4 referred to Public Prosecutors, and 15 remain under preliminary investigation.¹⁷
19. Greek civil society’s joint input to the 2024 European Commission’s Annual Rule of Law Report on Greece demonstrates that evidence collection in cases of investigations into ‘pushback’ allegations remains deficient and investigations lack independence, being carried out by the very same state bodies that perpetrate the violence (e.g., Hellenic Police and HCG).¹⁸ The report refers to the Greek Ombudsman’s finding that “systematic lack of effective investigation into disciplinary misconduct of law enforcement officers [...] not only persist but have been exacerbated”.¹⁹
20. The 2024 ‘Guidance on investigating alleged ill-treatment at borders’, the European Union Agency for Fundamental Rights’ (FRA) also made reference to the deficient and lacking investigations into claims of ill-treatment during border operations in Greece, including failures to locate and interview victims or witnesses, restricting lawyers’ access to essential evidence like border surveillance footage, and neglecting proper procedural standards. FRA observed that the stark contrast between the volume of credible allegations and the minimal number of investigations paints a troubling picture of lack of accountability and transparency.²⁰

including the risk of being unlawfully expelled to Turkey. In many of these cases, *interim* measures ordering Greek authorities “to locate the applicants, not remove them from Greece, provide them with food, water and medical care and to give them access to international protection procedures”, were granted by the European Court of Human Rights (e.g., [O.B. and Others v Greece](#)).

¹⁵ Ministry of Migration and Asylum, [Letter to the European Commission](#), Ares(2024)1532076 (28 February 2024).

¹⁶ Ministry of Justice, [Reply to parliamentary question](#), 178/2024 (26/08/2024). The response includes enclosed replies from 19 Public Prosecutors’ Offices.

¹⁷ Ministry of Defence, [Reply to parliamentary question](#), Φ.900α/6153/19533 (21/10/2024).

¹⁸ HIAS et al., [Greece in Institutional Decline - Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report](#) (January 2024) pp.9-12.

¹⁹ European Ombudsman, 2022 Special Report, National Mechanism for the Investigation of Arbitrary Incidents (2023) p.23; cited in European Commission, [2024 Rule of Law Report Country Chapter on the rule of law situation in Greece](#) (24/07/2024) p.27.

²⁰ FRA, [Guidance on investigating alleged ill-treatment at borders](#) (July 2024) p. 3.

21. Frontex's Fundamental Rights Officer also unequivocal found in 2023 that "pushbacks (with other associated fundamental rights violations) are complex, well-resourced and highly coordinated, covert operations conducted systematically, rather than isolated incidents" and observed the "regular denial of wrongdoing by Greek officials, despite clear incriminating evidence, formalistic and limited responsiveness to enquiries, and refusal to provide potentially decisive evidence".²¹
22. In sum, enforced disappearances are critically maintained through the systemic denial of accountability and transparency by national investigative and judicial authorities. Given this, the continued deference to state and regional (e.g., EU) bodies whose very policies produce such deaths and (enforced) disappearances not only fails to challenge the systemic policies that produce such violence, but also risks normalising and validating such acts—by exceptionalising them and invisibilising their root causes. We therefore caution against the potential misuse of the category of ED to a) create a higher threshold for proving the violation of migrant rights and b) require migrants to prove violations of their rights before the law enforcement and judicial authorities of the same state that routinely denies their rights through policies that produce border deaths and disappearances.

E. Human rights impacts on families of missing and/or disappeared migrants

23. As the call for input emphasises, tracing and identification are obligations not only towards the missing, disappeared, or deceased, but foremost towards the living. This is part of the procedural rights to life of the missing, disappeared, or deceased, as well as of a family and loved ones' right to truth regarding the fate and whereabouts of their loved one.
24. The rights of the deceased and those of the living require that the circumstances and causes of death be investigated and properly determined as part of the identification process (both on grounds of families and loved ones' right to truth and of the broader demands of justice as relevant to other legal proceedings and rights). To honour the families' right to know, investigators need to broaden the scope of their efforts to "collect and interpret much more information than just the data to facilitate identification".²² Forensic communities have been advocating for identification to be seen as an integral element of the search process for missing persons, which ultimately aimed at "the clarification of the fate and whereabouts of the person".²³
25. State bodies' designation of a person's cause of death as 'natural' (e.g., in the cases of fatal hypothermia and drowning during border crossings or 'pushback' operations) or else of a person's status as 'missing' (e.g., in the case of collective expulsions or enforced disappearances) shifts the blame to the person crossing borders and erases the role of state actors in such deaths or disappearances. These designations make invisible the systemic policies and institutional order that makes such deaths and disappearances possible without any consequence or moral, legal or political

²¹ Frontex, Opinion by the Fundamental Rights Officer, Greece - advice to suspend or terminate Frontex operations in Greece in accordance with Article 46(4) of the EBCG Regulation (10/07/2023) p.2.

²² Salado Puerto et al., '[The search process: Integrating the investigation and identification of missing and unidentified persons](#)' Forensic Sci Int Synerg (2021) p.4.

²³ *ibid*, p.2.

responsibility. Identification, therefore, must include the determination of the cause of death *beyond* its medical meaning—and the state responsibilities that this determination triggers in terms of investigative and remedial duties.

26. Harm to deceased and disappeared persons and to the living may arise from acts ('doing') or from omissions. It can ensue from certain actions, policies or conditions, even when such acts or omissions do not *intend* to cause harm. Accepting that 'harm' has already been caused by the very disappearance and/or death of a person—to the person themselves, to their loved ones, as well as to their broader communities—the principle of 'do no *further* harm' should be understood broadly and require that state authorities avoid contributing to material physical harm, as well as other forms of harm, including legal, financial, and immaterial forms of harm such as social and moral harm.
27. Denial and concealment, which are central elements of enforced disappearances, constitute formative barriers to any possibility of acknowledgment of harm that took place, let alone to the possibility of seeking justice. In our experience, families of missing and/or disappeared migrants in Greece are not only prevented from accessing justice, but are also routinely exposed to *further* harm in the process of trying to access justice.

F. Mechanisms in place to support families and loved ones in 'searches' as well as in seeking justices and pursuing the right to the truth

28. There is no centralised contact point for families searching for loved ones who disappeared while crossing, or after having crossed, Greece's borders. The ICMP has held a process for at least four years to establish national 'focal points' to support families searching for loved ones within relevant state line ministries in four countries, including Greece, Italy, Cyprus and Malta. The process is not public, nor is it accessible to civil society. Information we have obtained indirectly about this process indicates that there are significant political barriers to creating streamlined processes for families searching for loved ones who died and/or disappeared while crossing the EU's borders. As discussed above, this is closely linked with the systemic policies of denial of transparency and accountability by states.
29. While Greek law enforcement authorities are legally obligated to undertake searches for missing persons,²⁴ the requirement in practice for filing a police complaint to trigger a search and issue a declaration of missingness²⁵ are astronomically high, and include knowledge of the last precise location of the person in Greece—with the burden of proof placed on the searching family. This means that most inquiries made with police stations in border areas neither trigger searches or cross-border police cooperation procedures, nor can yield information about such persons, due to the routine non-registration and clandestine arrest, detention and deportation practices without paper trail.

²⁴ Regulatory Order 2/1985, Article 12: 'Search of disappeared persons'.

²⁵ As well as cross-border cooperation, including through Europol, as would be the case in other cases of missing persons.

30. Despite the legal obligations binding the Greek state, families searching for loved ones are, in practice, only informally assisted by civil society groups to make inquiries with coroners, migrant camp authorities, and indirectly with the asylum service (to see if the person has lodged an asylum claim) but only with assistance from a legal representative. The coroner at Greece's Evros land border is a university professor who has been officially entrusted by the Greek authorities to handle all discovered remains of (racialised) non-nationals with limited infrastructure.²⁶ Since remains are not systematically recovered, they are often found many weeks or months after the person's death and disappearance, and are often hard to identify. In many cases, police authorities are known to remove the person's personal belongings and to classify the person's cause of death as 'natural', e.g. drowning or hypothermia, which preempts the initiation of a criminal investigation by prosecutors.
31. The coroner at Evros explains that he sends all collected DNA samples to the Athens DNA department, and that since the majority (70-80%) of dead bodies remain unidentified, he proceeds with the body's burial, accompanied by a code number, after 6 months. There is no centralised body with a clear overview of the database of unidentified dead bodies.
32. In theory, since DNA samples have been taken, if a family looks for a loved one after burial, identification could still be possible. However, the DNA office in Athens only processes DNA samples from searching family members upon request from the prosecutorial service where the missing person's declaration has been lodged to proceed with any inquiry. Since such declarations are near impossible to obtain in practice, searching families are often prevented from sending DNA samples. Even if a declaration was available, families cannot send samples from countries where the Greek embassy is non-operational, and have been prevented from doing so from abroad even from some European countries where they were told that they are required to travel to Greece.
33. There are many other obstacles faced by families throughout the DNA identification procedure in Greece, even in the case of recognised shipwrecks like that of Kythira, where all existing available mechanisms have been activated. A year after the activation of these processes, a family we accompanied was facing various complications in the DNA identification procedure due to deficiencies in the cross-border cooperation procedures between institutions in Greece and Turkey.

G. Measures that should be taken by States, international organizations, civil society and humanitarian actors to enhance monitoring, accountability and prevent migrant deaths and enforced disappearances

34. The widespread inaction to respond to the reality of enforced disappearances of migrants at the national, regional and international levels, is a result of the lack of recognition and acknowledgement of the root causes of border deaths and disappearances—i.e. state policies that systematically remove illegalised border crossers from recognition and protection by law and rendering them rightsless. The

²⁶ Border graves reporting team, [Revealed: More than 1,000 unmarked graves discovered along EU migration routes](#) (8/12/2023).

current humanitarian responses to such occurrences are not only inadequate, but also harmful for naturalising and normalising their violence.

35. Current border policies that entail the in/direct endangerment, abandonment and unprotection of 'illegalised' border crossers are forms of in/direct (enforced) disappearances. The acknowledgement and recognition of this reality is the foremost step towards accountability and justice. It is critical that such justice and accountability processes are understood and envisioned as systemic and transformative in nature—entailing not only marginal reforms but indeed fundamental and systemic change of the border regime.
36. As outlined in detail in the CED's GC 1, states must adopt proactive preventive measures, including legal and institutional reforms, to establish safe and legal migration routes, outside of the sole asylum avenues. States should further acknowledge and act on their positive obligations to take proactive responsive measures to secure the rights of those who have disappeared or perished and their families and loved ones. However, it is critical that international authorities understand that current border (legal) regimes enable such violence and routinely deny accountability for such acts, including in the exceptional cases that can be evidenced and brought before national courts. Even if such (individuated) cases of accountability would result in investigation and prosecution, they would not bring the kind of justice and transformation needed to address the reality of enforced disappearances.
37. Search and tracing infrastructure, including transnational cooperation procedures (including in many countries such as Greece with the collaboration of civil society groups), for missing persons that are already in existence should be applied—contrary to what has been the reality for persons who are racialised and illegalised, and whose lives are thus made disposable.