

**Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA CRO 1/2020

15 June 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/21 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received regarding the **alleged violent pushback of migrants by the Croatian police to Bosnia and Herzegovina outside official procedures**.

During his official visit to Bosnia and Herzegovina from 24 September to 1 October 2019, the Special Rapporteur on the human rights of migrants received information about violent pushback of migrants by Croatian border police to the territory of Bosnia and Herzegovina. This issue was addressed in the preliminary findings of the Special Rapporteur issued at the end of his official visit on 1 October 2019. The Special Rapporteur appreciates the exchanges he had with relevant Croatian authorities especially the written comments submitted on 18 November 2019 by your Excellency's Government in this regard. The Special Rapporteur took into consideration the information provided by your Excellency's Government, which is duly reflected in the section examining allegations related to the reported pushback in his report on the visit (A/HRC/44/42/ADD.2).

According to the new information received:

On 26 May 2020, a group of 16 migrants (all male, between 19 and 38 years old) were arrested by three men in black uniform and black balaclava, near Plitvice Lakes, in the Republic of Croatia. At the time of the arrest, the men in black uniform reportedly claimed to belong to the Croatian police and asked the migrants to obey their orders.

The three men in black uniform were later joined by five other men in the same uniform and balaclava. Some of them were armed with rifles and pistols. The 16 migrants were questioned about their country of origin. Reportedly, the moment when one migrant responded, one of the men in black uniform slapped him in the face. Personal items of the migrants, including mobile phones and money were

reportedly confiscated. The migrants were asked to remove their backpacks and they were then allegedly tied around trees by the men in black uniform. Each migrant was tied facing a tree with hands firmly against their waist. When the migrants were all tied up, the men in black uniform fired their guns several times close to the ears and legs.

According to the information received, after the shooting, the migrants were reportedly beaten by the men in black uniform with batons and gunstocks. Some migrants received electric shocks in the neck and head. One was subject to knife cuts in both of his palms. The men in black uniform also poured mayonnaise, ketchup, sugar and other ingredients they found in the backpacks of the migrants on their heads. The event was filmed by one of the men in black uniform with his mobile phone while the others were reportedly laughing and yelling in a provocative manner.

The men in black uniform then called the police. Consequently, 4 police officers in dark blue uniform with police insignia arrived with two vans. One of the men in black uniform took off his mask when the police vans arrived thus he became recognisable by the victims. According to the information received, the police officers seemed to know those men in black uniform. They greeted each other, shook hands and hugged. At the presence of the police in dark blue uniform, one of the men in black uniform threatened to kill the migrants if they came back to Croatia and fired his gun into the air several times. The police officers did not ask the migrants any question nor did they enquire about the visible injuries they had sustained. The police officers asked the migrants to load their belongings in the first van, and get into the second van.

According to the information received, the police officers drove the migrants to the Croatian border with Bosnia and Herzegovina. None of the migrants received any document concerning any decision on return. The Croatian police officers did not enter the territory of Bosnia and Herzegovina but dropped these 16 migrants in the area of Siljkovaca, a village close to Velika Kladusa. They asked the migrants to go to Bosnia. The personal belongings of these migrants were not returned to them. A few migrants asked for their identity cards back but the request was denied.

On 27 May, at approximately 7 a.m., 11 of the 16 migrants arrived in front of the gate of Miral Temporary Reception Centre, in Una-Sana Canton, Bosnia and Herzegovina. The other five migrants were unable to walk due to injuries sustained and stayed in Siljkovaca before being rescued later.

After all 16 migrants received basic medical checks, 10 of them were referred to the emergency room in the Primary Healthcare Centre in Velika Kladusa, Bosnia and Herzegovina. All of them sustained bleeding wounds in the head and

numerous bruises on various parts of the body. Some of them had visible swellings on limbs, which indicated possible fractures. Based on the results of X-ray examinations, doctors at the Primary Healthcare Centre confirmed that 4 migrants sustained fractures in the arm and one had fractures in one leg and both arms. Two of the migrant victims were further referred to the Cantonal Hospital in Bihac. All migrants were later accommodated in Miral Temporary Reception Centre where they continued to receive necessary assistance and medical care.

According to the information received, there has been a significant increase in the number of recorded cases of pushback by Croatian police in recent months. In April alone, over 1500 migrants, including children, were forcibly returned to Bosnia and Herzegovina. The use of violence by Croatian police against migrants has also reportedly increased in a systematic manner. Cases of migrants, including children, subjected to physical violence such as beating and electric shocks, and degrading treatment were reported in over 60% of all recorded pushback cases between January and May 2020. In addition to the alleged degrading treatment described in the event of 26 May, abusive treatments also included forced river crossing and stripping of clothes despite adverse weather conditions; gender insensitive and inappropriate body searches; deprivation of access to medical assistance, water, food and toilets; forced stressful body positions; and spray-painting the heads of migrants with crosses. With regard to the group of men in black uniform who were allegedly involved in violent pushback in the event of 26 May 2020, based on the information received, these individuals are believed to belong to a special unit of the Croatian police. Other reports show that uniformed personnel associated with the Croatian police were also involved in pushback operations. In addition to the use of violence and degrading treatment, forced returns were reportedly carried out outside official procedures. Reportedly forced returns happened mainly at nighttime and not at official border crossings but in villages near border areas. While a small number of migrants who were forcibly returned had gone through some sort of registration process in Croatia, most of the returns took place without any registration or decision on return. Neither was there any prior-notification or acceptance by the authorities of Bosnia and Herzegovina. With regard to access to asylum procedure, it is demonstrated in several reported cases that Croatian police officers ignored migrants' expressed requests to apply for protection under international human rights and refugee laws.

Without prejudging the accuracy of the information received, we are deeply concerned by the reports of increased use of violence by Croatian law enforcement personnel against migrants in recent months. More specifically, in the event of 26 May 2020, the 16 migrants were allegedly subjected to acts amounting to torture and ill-treatment at the hands of individuals believed to be law enforcement personnel, in contravention of the absolute and non-derogable prohibition of torture and ill-treatment codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman

or Degrading Treatment or Punishment, which Croatia ratified in 2005. In this context, we stress that States must respect and ensure the right to be free from torture and ill-treatment without any discrimination. The intentional infliction of severe pain or suffering, “for any reason based on discrimination of any kind”, including based on migration status by definition amounts to torture, regardless of whether it is inflicted by or at the instigation or state officials themselves, or merely with their consent or acquiescence (A/HRC/37/50, para 13).

We would further like to draw the attention of your Excellency’s Government to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. General provision 4 requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force. Further, according to general provision 5, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence; minimize damage and injury, and respect human life; and ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.

We are gravely concerned about the alleged violent pushback of migrants to Bosnia and Herzegovina by Croatian police, which seem to occur repeatedly and is still ongoing. We note with concern that migrants were forcibly returned to Bosnia and Herzegovina by Croatian police without any individual assessment on any protection needs they might have. Returns were reportedly conducted outside official procedures. In this regard, we refer to article 14 of the Universal Declaration of Human Rights which provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary or collective expulsions.

The principle of non-refoulement is codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3 provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterised by its absolute nature without any exception. Heightened consideration must also be given to children in the context of non-refoulement, whereby actions of the State must be taken in accordance with the best interests of the child.

We draw the attention of your Excellency’s Government to OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders. In particular, guideline 9, which states that returns or removals should not violate the

principle of non-refoulement and/or the prohibition of collective expulsion. In the case of forced returns, the Guideline calls on States to ensure that return procedures are not carried out at all costs, but are interrupted where the human rights of the migrant are compromised, and that migrants whose rights are violated during return processes can file complaints.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate whether the above-mentioned allegations, including the beating and ill-treatment of the group of 16 migrants by the Croatian police, have been or are the subject of an investigation and/or prosecution by the relevant authorities. Please provide information about their outcomes, including the identification of the men in black uniform and as regards remedies for the victims.
3. Please indicate what measures have been taken by your Excellency's Government to protect the human rights of migrants at international borders, including to ensure their access to relevant procedures for persons in need of protection under international human rights and refugee laws. These also include measures taken or to be taken by your Government to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be

alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a copy of this letter will be transmitted to Bosnia and Herzegovina as concerned State for their information.

Please accept, Excellency, the assurances of our highest consideration.

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment