

GUIDE ON DOCUMENTING PUSHBACKS AT THE CYPRUS-LEBANON-SYRIA BORDERS



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Introduction

Recent years have witnessed an increase in boat arrivals to Cyprus from Lebanon, with dozens of individuals on board, primarily Syrian refugees. With the exception of specific cases, Cypriot authorities have summarily returned these¹ individuals to Lebanon despite the risk of both direct and indirect refoulement in Lebanon to Syria².

This handbook aims to offer civil society organizations, lawyers, practitioners, advocates, and activists the necessary tools and information to document and challenge human rights violations at the Cyprus-Lebanon-Syria borders, specifically regarding forced return practices, to support them in advocating for the halt of these unlawful practices, raising State responsibility for such violations and achieve justice for the victims.

Focusing on the collection of evidence for litigation and advocacy purposes in relation to the strategic litigation, this guide provides insights to practitioners on the existing legal avenues to challenge human rights violations at the Cyprus-Lebanon-Syria borders, and practical information on lodging and submitting evidence, communication, and complaints before the relevant legal bodies.

To this end, this handbook relies on the case law and practices of the European and international bodies in similar contexts and circumstances, to demonstrate the key evidence accepted by the human rights bodies in practice, the potentially successful methods for evidence collection, the most efficient mechanism depending on the circumstances at hand, and the length of the process.

Methodology

This guide relies on information collected from primary sources as well as secondary sources. For the purpose of including the insights and experience of practitioners and scholars, individual interviews were conducted with litigators and advocates working in the context of pushbacks at borders in November and December 2022.

In addition to information based on the practical experiences of experts, the guide also includes information collected from previously published handbooks by other actors, books by scholars, UN reports, and documents from the European Court of Human Rights (ECtHR) and United Nations Treaty Bodies. Additionally, this guide builds on existing relevant caselaw before the ECtHR and the views of the UN treaty bodies. All cited judgments and views date prior to 15 November 2022.

In this guide, the term “pushback” is used in accordance with the definition of the special rapporteur on the human rights of migrants at the United Nations Office of the High Commissioner for Human Rights. Subsequently, the term ‘pushbacks’ is defined as:

“Various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement.”³

As for the term ‘collective expulsions’, it is defined as:

“Any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.”⁴

Background

As the economic situation in Lebanon further deteriorates and the tensions between the host communities and the Syrian refugee communities further exacerbate, residents, especially refugees who are more vulnerable, are left at the margin, with limited access to protection, livelihood, education, healthcare, and other basic necessities. Due to limited recourse of international protection and asylum-seeking prospects, cases of irregular migration from Lebanon, although are not new, have increased in recent years.

This is demonstrated by data from the UN Refugee Agency (UNHCR)⁵, recording 55 actual or attempted boat movements in 2022 involving 4,629 individuals and 25 successful disembarkations at a third country, almost three times the number of individuals who undertook such movements in 2021, at 1,570 individuals in 38 boats. According to the UNHCR, at least 185 individuals are missing or have been confirmed deceased in five separate incidents of boats “getting into distress at sea” during 2022⁶.

Given the strategic geographical location of Cyprus in the Mediterranean Sea, close to Lebanon and part of the European Union, the country is considered accessible by those attempting to leave the country through the sea borders. This has led to several boats of migrants travelling through the Mediterranean Sea towards Cyprus without valid visa or entry permits. The UNHCR recorded 17 boats in 2019, involving approximately 270 individuals, 21 in 2018 involving at least 490 individuals, and 34 boats in 2020 involving 794 individuals⁷. The over-crowdedness of these boats and their instability, has caused the deaths and loss of many people at sea⁸. For instance, on a boat that left Lebanon to Cyprus on 22 August 2021, several refugees were forced to jump into the sea after the boat’s engine got destroyed, and one of them was lost at sea⁹.

Cypriot authorities have repeatedly resorted to pushing boats back to Lebanon¹⁰, and denying individuals access to an asylum procedure¹¹. **According to the UNHCR, at least five boats were returned from Cyprus to Lebanon in 2022 involving at least 415 individuals, while eight boats were returned in 2021 involving 226 individuals and 200 individuals were returned from Cyprus to Lebanon in 2020¹².** On the other hand, in September 2020 alone, EuroMed Rights and its partners observed Cypriot authorities pushing back 229 individuals in at least five separate instances from Cypriot waters to Lebanon¹³. More recently, on 04 July 2022, Cyprus pushed back a boat of 52 passengers leaving from Lebanon to Italy.

¹⁴

According to the documentation of Human Rights Watch in 2020, pushback instances included Cypriot coastguards repeatedly “brandishing weapons at incoming boats from

Lebanon, encircling them at high speed, abandoning some at sea without fuel and food and, in other instances, proceeding to beat passengers on board.”¹⁵ This documentation has been echoed by EuroMed Rights and its partners¹⁶.

Syrian refugees summarily returned by Cyprus to Lebanon are at risk of ill-treatment, torture and/or deportation to Syria. Lebanon has a strict non-readmission policy for Syrians who have left the country, notably with the Higher Defence Council decision adopted in 2019 allowing the expulsion to Syria of Syrians who surreptitiously (re-)enter Lebanon after 24 April 2019. The refugee can challenge this decision before a judge, who may order the General Directorate of Lebanese General Security (DGSG) to reconsider their deportation case and temporary halt the deportation pending reconsideration¹⁷.

In the practice of EuroMed Rights’ partners, the lawyers only learn of the deportation less than 48 hours before the implementation of the order. Such limited timeframe hinders the ability of the lawyer to interfere in the case and may be insufficient to challenge the decision.

Between 25 April 2019 and 19 September 2021, the DGSG deported 6,345 Syrian refugees to Syria based on the aforementioned decision. Access Center for Human Rights (ACHR) documented the deportation of at least 51 persons who had migrated by boat from Lebanon to Cyprus and subsequently forcibly returned from Cyprus to Lebanon during 2021. From those deported, the Syrian authorities referred at least three of them to court on terrorism charges, while the fate of two others – who are Syrian army deserters - remains unknown¹⁹.

Similarly, in 2019, ACHR documented 42 cases of arbitrary deportation of Syrians from Lebanon, including seven individuals who were subject to arrest and torture by Syrian authorities upon their return to Syria²⁰. Human rights institutions have questioned the lawfulness of the deportation decisions carried out by the DGSG in light of the deportation of some refugees to Syria, despite a well-founded risk of torture, ill-treatment, and detention for some in Syria²¹.

Since summer 2020, Cyprus and Lebanon have held talks on a readmission agreement that would operationalise a 2002 bilateral readmission agreement between the two countries²². While the agreement does not contain an explicit ‘non-refoulement’ clause, Article 11 of the agreement subjects it to the obligations arising from the Geneva Convention relating to the Status of Refugees of 1951 and the European Convention on Human Rights²³.

The agreement contains a clause for the readmission, specifically of non-Lebanese citizens who departed from Lebanon. Lebanon has only ratified the agreement, but not its implementation protocol²⁴.

Lebanon is not a party to the Geneva Convention relating to the Status of Refugees of 1951 nor its 1967 Protocol and has not adopted a clear legislation addressing the status of refugees. The absence of a refugee legislative framework in Lebanon has facilitated the existence of problematic agreements such as the aforementioned readmission clause. While a framework for refugee protection was established in Lebanon with the UNHCR in 2003, this framework remains under threat

In 2003, Lebanon and the UNHCR signed a Memorandum of Understanding which “provides a mechanism for the issuing of temporary residence permits to asylum seekers”²⁵, however, as of 2015, the Lebanese government has suspended UNHCR registration of Syrian refugees²⁶. This has further deteriorated the conditions of Syrian refugee conditions, particularly with regards to legal stay and access to residence permits²⁷.

Existing Legal Avenues

On the Universal Level

Individual complaints before UN Treaty bodies

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. These committees may under specific conditions, consider individual complaints or communications from individuals²⁸. The individual complaint must be against State parties to the relevant Convention and Protocols, and that have accepted the competence of this UN Treaty Body to look into individual complaints, either by ratifying or accessing to an Optional Protocol or by making a declaration to that effect under a specific article of the Convention²⁹.

After processing the communication, the treaty body will not adopt a “decision” but will rather adopt a “view” which is non-binding but provides recommendations to the State. Despite its non-binding nature, this process remains important for several reasons, including:

1. At any stage prior to its “view”, the committee may determine necessary interim measures. This is particularly helpful in cases of deportations that have been planned but have not yet been implemented.
2. The committee will assess the State’s implementation of these recommendations when monitoring and reporting on the human rights situation of the country.
3. The submission of complaints creates an “archive” of documented human rights violations against the State, which will in turn, help in advocacy work.

It is important to note that one of the admissibility criteria for a complaint to the UN treaty bodies is the exhaustion of domestic remedies. However, in the context of pushbacks, the Human Rights Committee has stated that “an effective legal remedy in cases of violations of the principle of nonrefoulement has to be suspensive in order for it to be effective”. In other words, in order for legal remedies to be considered effective on the domestic level, they must be able to lead to a halting of the deportation or forced return decisions³⁰.

Out of the ten existing UN treaty bodies, the following may be the most relevant in the context of human rights violations at the Cyprus-Lebanon-Syria borders³¹:

- **the Committee against Torture,**
- **the Human Rights Committee,**
- **the Committee on the Rights of the Child,**
- **the Committee on the Elimination of Discrimination against Women,**
- **the Committee on the Elimination of Racial Discrimination,**
- **the Committee on Rights of Person with Disabilities, and**
- **the Committee on Enforced Disappearance.**

In practice, Cyprus authorities are conducting pushbacks to Lebanon, but it is Lebanon that is conducting the deportations to Syria. Lebanon has not accepted the individual complaints procedures, and subsequently, it is not possible to submit individual complaints to UN treaty bodies on violations committed by Lebanon, which would include the deportations of Syrians after pushbacks³². However, Cyprus accepts the individual complaints procedures, and therefore, it is possible to submit individual complaints regarding violations committed by Cyprus before one of the aforementioned UN Treaty Bodies. This may include complaints on the ill-treatment against the refugees, discrimination practices against them, and other possible violations.

The UN Committee Against Torture

In the context of pushbacks and halting forced returns, the Committee against Torture is the most relevant UN Treaty body when seeking to halt an expulsion or forced return. Although the complaints may not be anonymous and the decisions adopted by the Committee are made public and are published in its annual report, the applicant’s identity may not be published, if requested, to ensure the protection of the victim’s identity especially in cases of pushbacks³⁴.

In addition to the general admissibility criteria mentioned above, the complaint before the Committee against Torture must be³⁵:

- Compatible with the provision of the Convention against Torture (CAT),
- Not be simultaneously or previously examined by another international body.

It is important to note that complaints before the Committee do not have suspensive effect, but the Committee may accept a request for interim measures when it finds it necessary to “avoid an irreparable

harm to the (alleged) victim”.³⁶ Depending on the circumstances, the Committee may consider that the risk of torture following an expulsion or forced return may constitute an “irreparable” harm and thus may adopt an interim measure request for the Respondent State to not remove the Applicant³⁷.

The Committee has largely requested interim measures, especially in non-refoulement cases. Between 29 April 2021 and 13 May 2022, the Committee received 48 requests for interim measures of protection and granted 42 requests³⁸. For further context, since 1989 and as of 13 May 2022, the Committee has registered 1,126 complaints, of which 127 had been declared inadmissible. Out of 445 complaints finalized, the Committee found violations in 179³⁹.

In the cases of complaints regarding pushbacks, as mentioned above, these complaints should be brought forward when the decision to return the individuals is confirmed but it is not possible to halt this decision on the domestic level. While this avenue is still applicable and practitioners may resort to it, it may unfortunately not be practical in many cases as forced returns decisions might not be known, confirmed, or might only be confirmed in a very short time frame before the implementation of the decision, which might make an individual complaint before a UN treaty body unfeasible in such cases.

On the European level

Complaint before the European Court of Human Rights

Article 34 ECHR: ‘The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.’

The Court may even provide the Member State with ‘general measures’ to follow, in addition to the judgment on the case itself. This is usually done in cases where the violation is demonstrated to be systematic⁴⁰. Despite Lebanon and Syria not being within the jurisdiction of the European Court of Human Rights, cases may still be brought before this court against Cyprus on many bases, including:

- Human rights violations committed by Cyprus against refugees within Cyprus’ jurisdiction, including in the high seas when Cyprus is exercising jurisdiction over the boat and the refugees⁴¹.
- The deportation of refugees from Lebanon to Syria as a result of the pushback exercised by Cyprus, and subsequent violations against the returned refugees in Syria.⁴²

The judgments of the ECtHR are binding on the state party concerned⁴³. Six months after the final judgment, the Member State has to present an “action report” to the Committee of Ministers (the CM), who supervises the execution of the Court’s judgments. In this report, the State informs the CM of the measures it has taken to implement the judgment and publishes the state of its implementation as updates come through. **Accordingly, the CM either adopts a “final resolution” and closes the case or keeps the case open on its agenda until it sees that the State has implemented the necessary**

actions⁴⁴, this process may take years. The CM may be a helpful tool for advocacy efforts as they can place pressure on states to adopt better legislation or implementation of decisions ⁴⁵. They also welcome information and communications from non-state actors throughout the years, which allows litigators, advocates, and civil society actors to communicate violations and gaps in implementation or legislation to CM⁴⁶.

Admissibility criteria

In order to submit an individual complaint, the applicant must:

- Have exhausted all domestic remedies⁴⁷,
- Submit the application to the ECtHR within a period of four months after the exhaustion of all domestic remedies, and⁴⁸
- Identify all applicants, as the Court does not admit anonymous applications⁴⁹.

It is important to note that the Court has considered the vast majority of applications it has received as “inadmissible”, with more than 90 percent rate in recent years. In 2021, the Court decided on 36,092 cases, of which 32,961 applications were struck out or considered inadmissible. Similarly, in 2020, the Court deemed 37,289 applications inadmissible or struck them out, out of 39,190 applications⁵⁰.

The main causes for inadmissibility have been⁵¹:

- **The non-exhaustion of domestic remedies,**
- **The non-compliance with the four-months rule, or both.**
- **Failure to properly substantiate the claims (ill-founded claims).**

In 2021, at least 26 cases were rejected for not having “official confirmation of the alleged government action having taken place”. With the “alleged action” referring to a pushback case from Cyprus to Lebanon. The rejection letter from the ECtHR adds that the pushback survivors had “never (been) notified with an entry ban/deportation/expulsion decision in writing explaining the reasons in fact and in law”, nor had any “record (been) made of (their) wish to apply for asylum.”

Rule 39 – Interim measures

Rule 39 of the Rules of the ECtHR on interim measures reads as follows:

1. “The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the [Council of Europe] Committee of Ministers.
3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.

4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.”

Under Rule 39 of the Rules of the ECtHR, the Court may provide interim measures to any State Party to the Convention. These measures are considered “binding” for the State Party and the failure of the State to comply with them, constitutes a violation of Article 34 of the ECHR which requires the State to respect the “effective exercise of an applicant’s right to access the Court.”⁵²

These measures are exceptional and urgent in nature and thus only apply in cases where there is an “imminent risk of irreparable damage”⁵³. For this reason, the interim measure’s time frame covers only the duration of court proceedings, or even a shorter period⁵⁴. The Court considers a risk imminent specifically when it is impossible for the representatives or the victims to go through domestic legal avenues to halt the return or removal, or when domestic avenues have been unsuccessful⁵⁵.

For this reason, the Court has stated that, time wise, it may not be able to deal with requests in expulsion or extradition cases received less than a working day before the scheduled time of removal, and the Court advises that when the risk of immediate enforcement of expulsion cases is imminent even if the domestic decision is not final, the representatives may submit the request for interim measures without waiting for the final decision⁵⁶. In other words, if domestic legal remedies are still a potential avenue for the case, then in the view of the Court, the risk is not imminent and therefore the request for a Rule 39 would not be admissible.

In practice, interim measures seem to be applied only in specific violations, typically in cases where there is an imminent threat to life in accordance with Article 2 of the ECHR – which provides the Right to Life, and/or in cases where there is an imminent threat of ill-treatment in accordance with Article 3 of the ECHR which prohibits torture and inhuman or degrading treatment⁵⁷. Previous caselaw of the ECtHR has also included the indication of interim measures to have the State Party⁵⁸:

- Refrain from removing individuals to countries where there is real risk of death, torture, or ill-treatment.
- Receive and examine asylum applications of persons presenting themselves at the border checkpoint.

Referring to the Court’s caselaw, it appears that these measures have been adopted when the following conditions were concurrently present in the case⁵⁹:

- There was real risk of irreparable harm.
- ◊ The Court’s does not consider that “mere expression of a fear of persecution upon return in itself amounts to a “real risk”.”
- ◊ The Court considers the combination of facts and circumstances, their credibility, the general security of the country and where relevant the UNHCR’s position.
- The risk was imminent.
- ◊ This means that there are no possibilities to make use of the domestic legal avenues capable of suspending removals, or where such avenues have been used unsuccessfully.
- ◊ The Rule 39 request must clearly state if the domestic remedy is not effective.

In addition to the aforementioned factual conditions, when submitting a request for interim measures, it is important to ensure that the request meets the following criteria, otherwise, it highly risks being immediately rejected and not shown to a judge⁶⁰.

- The request falls within the scope of Rule 39
- The request involves an imminent threat. In other words, it is not premature.
- The request is complete and fully substantiated.

With that being said, the rejection rate of requests for interim measures is noticeably high. Between 2019 and 2021, the Court received 5,518 requests and only granted 625 requests.⁶¹ Regarding Cyprus specifically, the court only received six requests and rejected all of them due to them being “out of scope”⁶².

Upon receipt of the application, the Court may indicate to the state certain interim measures that in its view, should be adopted while the Court examines the case. It is important to note that the Court reviews requests for interim measures based on a standard checklist and does not publish its decision nor provide reasons for refusal or acceptance of the request⁶³.

Practical Challenges of the Legal Avenues

In practice, the aforementioned avenues, although useful, may come with numerous challenges that hinder their applicability or success in some cases, most notably:

Time Constraint

Given the nature of non-refoulement, the cases at hand have a small-time frame, necessitate urgent intervention and quick result in order to halt the expected expulsion or return. This affects the effectiveness of all existing legal avenues:

- **In the case of an individual complaint before the UN treaty bodies**

Even in cases of a request for interim measures due to urgency which includes the scheduled deportation or forced return of an individual, the assessment of the complaint may take “several working days”⁶⁴, and therefore may not be practically feasible in some cases where the scheduled return will take place in a very narrow time frame that makes a “several working days” wait ineffective.

- **In the case of complaints before the ECtHR**

Case proceedings before the ECtHR may take years, as in a 2021, the ECtHR published a document entitled “The ECHR in 50 questions” in which, referring to the average length of its proceedings, it stated that “the Court endeavours to deal with cases within three years after they are brought, but the examination of some cases can take longer, and some can be processed more rapidly.” In practice, some cases have taken longer than that, even reaching 10 years⁶⁵. Even in “high priority” cases, the proceedings may last up to two years, and have exceptionally lasted longer, including lasting five years⁶⁶.

In the case of interim measures before the ECtHR

The Court necessitates a “more than a working day before the scheduled return” in order to assess the case. However, in practice, the scheduled return is many times announced or communicated with the returnees and their representatives in a narrow time frame that may leave insufficient time to collect all the necessary information and documents, and lodge the request in due time. For more information on the opening hours, contact information and the details about lodging requests for interim measures before the ECtHR, see: ECtHR. Practical Information for lodging a request for interim measures.

Thus, case proceedings before the ECtHR may not be feasible or effective in urgent cases. Even if the complaints before the ECtHR were brought after the expulsion or return were conducted, the lengthy process still poses a challenge as it may be draining for the victims, and resources consuming for the representatives, and it involves years-long follow-up with applicants, documentations, updates and submissions of new developments and evidence. Moreover, it is common in cases of pushbacks and deportations to lose contact with the victims or to face challenge in maintaining contact, especially on the course of several years. This issue is demonstrated in one of the cases that EuroMed Rights has been working on with its partners in Cyprus since 2020⁶⁷, a case of two Syrians who were returned by Cyprus to Lebanon, where they have been residing with their families as they await years for the ECtHR proceedings and decision. They are forced to remain in Lebanon while they await this lengthy process, amid lack of necessary protection and support. It is thus crucial to consider funding for humanitarian support for the victims who are awaiting the judgment.

Absence of Appeal

Individual Complaint before the UN Treaty Bodies

The decisions of the committees are final and do not provide any appeals. Subsequently, if the Committee finds the complaint inadmissible or does not find a violation, then the case is closed, and the applicant will not be able to appeal. On the other hand, if the committee finds a violation, then it will provide the State party to communicate information within a specific time frame regarding the steps it has taken in relation to the committee’s decision. Typically, if the case is not urgent this time frame will be of 180 days, while it will consist of “several working days” in the case of urgent cases⁶⁸.

Interim Measures based on Rule 39 of the ECHR

In the case of the Rule 39 before the ECtHR, the process does not allow for an appeal of the Court’s decision in case of refusal⁶⁹. This may pose a challenge especially if the Rule 39 was taken as a last resort and in a case of imminent danger. However, in the case of new developments in the case, the applicant may submit a new request⁷⁰.

Evidentiary needs in litigation processes

One of the key aspects of litigation or advocacy work is collecting the necessary evidence, demonstrating the pushback, and the well-founded risks that individuals are likely to face in the case of forced return, including the risk of being deported to a third unsafe country, primarily the country of origin where the individual may be at risk. Establishing the existence of a risk may be tricky as there is no standard definition for the concept of “risk” and its assessment is determined on a case-by-case basis after examining the “foreseeable consequences” of returning the applicant, while taking the general situation in the receiving country and the applicant’s personal circumstances into account⁷¹.

However, according to UN Treaty Bodies as well as the ECtHR, the risk has to be present and personal, with substantial grounds for the probability of danger in case of return⁷². In other words, past violations contribute to the risk assessment but are not sufficient if there is no indication of a current risk. Moreover, a “mere possibility” is not sufficient to consider the risk “real” or “serious”, and a “high likelihood” must be demonstrated. General circumstances in the country or region that may not necessarily personally and directly affect the individual in question, are also insufficient to establish the existence of a risk.

It may be worth mentioning that scholars have noted that in practice the standard of proof required by the ECtHR appears to be higher than the standard required by the UN Committee Against Torture.

⁷³

Risk must be:

- Present
- Personal
- Well-founded: Substantial grounds of probability or high likelihood

Subsequently, the Court takes various aspects into consideration when assessing an application, focusing on the current, future but also past situations of the applicant in order to examine the existence of a risk. Although a testimony or statement from the victims or witnesses is important, it is not sufficient on its own and the Court will not consider an application solely relying on this⁷⁴.

For this reason, it is important for the application to include supporting documents and information that may assist in proving the case. This may also include the published work of human rights institutions, such as situation reports from the UN, or unbiased well-recognized non-governmental organizations or civil society institutions, providing information and documentation on the case itself, or on relevant context that will assist in assessing the case.

1. Direct evidence and evidentiary needs

1.1 Testimonies

In the context of pushbacks, acquiring testimonies is often the second most accessible type of evidence, after published material.

Gathering accurate, impartial, and well verified testimonies requires specific standards and guidelines that previously published handbooks and guidebooks have explained in detail. As this guide seeks to

complement the already existing work, you may refer to the index at the end of the guide for relevant material providing detailed information on this subject.

This guide will refrain from discussing the methods of evidence collection or interview conduction and will instead focus on the aspects that the UN treaty bodies, and the European Court for Human Rights have considered when assessing the facts and evidence of a specific case. This is to provide those wishing to document pushbacks with information that may be helpful for gathering testimonies or conducting interviews. According to the previous practice, judgments, and reasonings of these legal bodies:

- The wish to apply to asylum does not have to be expressed in a particular form, it may be expressed in any conduct that clearly signals this wish⁷⁵.
- If the applicants can argue that there is no guarantee that their asylum applications would be seriously examined by the authorities of the third country (the country they are coming from, in this case, Lebanon), and that their return to their country of origin would violate Article 3 of ECHR, then the State must allow them to remain in its jurisdiction until the finalization of domestic assessment of their application for protection. The State cannot deny them access to its territory⁷⁶.
- In the High Seas, the individuals wishing to seek asylum are considered under the jurisdiction of the State that exercises control over them. Subsequently, if this State is a member state of the Council of Europe, then the ECHR would still apply⁷⁷.
- The Member State of the Council of Europe has the obligation to ensure that in the cases of returns, the intermediary country (in this case, Lebanon) offers “sufficient guarantees” to prevent the persons concerned from being expelled their country of origin (in this case, Syria) without a risk assessment. This seriousness and importance of this obligation is heightened if the intermediary country (in this case Lebanon) is not a State Party to the ECHR (in this case, Lebanon is neither party to the ECHR nor to the 1951 Refugee Convention)⁷⁸.

Previous caselaw in similar contexts have also indicated that the European Court of Human Rights takes the following into consideration when assessing human rights violations pertaining to pushbacks:

- Whether the lives of the applicants were endangered⁷⁹. Omissions, and delays by the national authorities in conducting and organizing rescue operations has been considered a violation by the Court⁸⁰.
- Whether the applicants were lawfully detained⁸¹.
- Whether the communication with the applicants was in a language they understood⁸².
- Whether the applicants were informed of the reasons for their detention⁸³.
- Whether the applicants were provided with an effective remedy to appeal against detention prior to the pushback⁸⁴.

1.2. Supporting documents

Legal bodies do not rely solely on testimonies for their decisions or views. For this reason, applications should be accompanied with documents that support the claims of the applicant and the testimonies. Direct supporting documents are those that are personal and directly linked with the Applicant.

Personal Documents

It is important to include and prioritize, in any application, supporting documents that are personal to the Applicant and directly and specifically linked to them. These documents may be official documents, such as documents of a governmental, educational or medical source. The documents may also be directly concerning the claims or may serve to assist in the interpretation of other evidence. Depending on the circumstances, this may include:

- Official documents, such as administrative or judicial decisions. For example, a judicial decision issued by a domestic court regarding the claim currently being submitted on an international level. Official documents may also include freedom of information requests.
- Documents demonstrating criminal proceedings and previous detention time, especially for arbitrary detention or for crimes with a political or human rights nature.
- Military identity card or a document stating that the individual is wanted for mandatory military conscription.
- An arrest warrant against the individual especially for crimes of political or human rights nature.
- Medical evidence that may support claims of a present medical issue that should hinder any return.
- Medical evidence demonstrating previous torture that the applicant may have undergone.

It is important that practitioners attempt to obtain state-issued response, documents or records regarding the claim of pushback in order to strengthen the case. Such documents could be obtained in different ways, such as through making freedom of information requests or launching criminal proceedings on the national level against general security officers or border patrol officers in order to acquire a state record or response which could then be used before the ECtHR as evidence or alleged confirmation of the claims.

Supporting Documents from human rights institutions

The applicants may also request documents from human rights institutions who have documented their case, to support the claims. For instance, in the context of Cyprus-Lebanon-Syria pushbacks, the UN Refugee Agency (UNHCR) and/or the International Committee of the Red Cross (ICRC) may follow up with the individuals upon their return to Lebanon during the detention period.

In this case, the applicants may request a document from the ICRC which would state that they were interviewed, have underwent a follow-up from them during the detention period, and specifies the time frame. While this type of document may not mention the pushback itself and might only state that the applicant was seen by the ICRC during their detention period, its significance lies in showing that the applicant was detained, the conditions they were in and if they underwent any ill-treatment.

The applicant may also have had their case documented by a well-recognized and unbiased human rights institution, including a civil society actor, and may request a letter from them that states the documented facts and findings. This letter is not sufficient on its own to prove the claims but may help when included with other types of evidence.

For these reasons, it is important to reach out to human rights institutions soon after the return, to document the case and at least obtain any supporting document that may later assist in litigation or advocacy.

2. Indirect evidence

In the context of pushbacks on the Cyprus-Lebanon-Syria border, the collection of evidence is often hindered by the absence of direct and specific physical evidence pertaining to the applicants. Generally, both Lebanon and Cyprus avoid providing the returned individuals with any official document that may help prove of the pushback or deportation, including documents revealing that Cypriot authorities have interacted with the individuals who were trying to seek asylum, or documents clearly revealing that Lebanon detained the individuals upon their return from Cyprus.

However, in such cases where official evidence that is directly and specifically pertaining to the applicant is lacking, it is possible to include evidence that has circumstantial nature or general contextual nature as a tool to strengthen the claims.

2.1. Circumstantial evidence

Circumstantial evidence generally refers to indirect evidence that is incapable on its own to prove the facts or the claims but may help interpret the existing facts and information. The existence of several pieces of circumstantial evidence, though not sufficient on their own, may assist in demonstrating and strengthening the claims.

In the context at hand, this type of evidence is the most common type used in practice, in addition to testimonies to corroborate the testimonies, due to the lack of physical direct evidence. For example, practitioners may rely on:

- Pictures taken by the applicants during their trip, pushback, and returns.
- Pictures on the boat, or of the boat.
- Pictures showing the time lapse on the boat. This may include pictures of the sky, pictures of the clock, pictures of a phone with the clock and the surroundings that show the applicants on a watch.
- Videos or livestreams filmed by the Applicants during their trip.
- Pictures that show that the applicants have arrived at the territories of the Asylum State, such as a picture on the borders or inside the country.
- GPS positions of the applicants that may demonstrate that the applicants have entered the territories of the Asylum state.
- Open-source investigations to track boats of asylum seekers or the boats of the authorities and relying on surveillance planes.
- Social media publications to monitor the existence of any media taken during the journey that may be relevant to the case.

Such circumstantial evidence could play a significant role in building a case and the ECtHR has taken it into consideration in multiple cases. For instance, **the Court has positively considered the existence of a written asylum application that the authorities refused to accept or assess, and the photograph of the written asylum application next to the applicant's train tickets.** In the context of Cyprus-Lebanon,

taking pictures and videos of anything that may be remotely relevant to build a case could be crucial, as it may be the only type of existing evidence to the case. This type of circumstantial evidence may be obvious, as the examples mentioned above, however circumstantial evidence may also be unclear or unapparent, and loosely linked to the case, but may still be used to interpret the facts. This could be the case of taking pictures of the sun movements on the boat, which indicate time lapse.

In the Cyprus-Lebanon cases, many refugees either threw away their phones in the sea during the trip, had their phones confiscated by the Cyprus or Lebanon or deleted the pictures and videos on their phone. For these reasons, it is crucial that the pictures or videos are backed up on the drives, if not live streamed, to ensure they remain intact even if the devices are destroyed or confiscated.

2.2. Situation Reports

Another form of indirect evidence is pre-existing secondary information. Information on the situation or context from human rights institutions such as the ICRC or UN agencies or recognized and unbiased civil society actors may strengthen the testimonies, and the claims. This information can take the form of, and not limited to, caselaw, news articles, reports, research papers and case documentations. Although not directly pertaining to the applicant, this information may indicate the presence of systemic practices similar to the claims being made by the applicant or may provide a better context for the situation that the Applicant may face in the case of their return. The ECtHR has in the past relied on reports published by human rights institutions and civil society actors to indicate the existence of systemic practices.

The ECtHR has taken into consideration the recognition, reliability and reputation of the source and its presence on the field when assessing the evidence. For this reason, it is important to take these factors into consideration when including information from secondary sources.

In the case of Cyprus-Lebanon-Syria pushbacks, demonstrating the pattern of subsequent deportations to Syria after Cyprus returns the boat passengers to Lebanon, and the violations the deportees undergo in Syria, may strengthen the claims of a risk for the applicant. At the time of writing, monitoring and documentation efforts in this regard remain limited. Such data is crucial for advocacy and litigation works, as it provides verified and tangible evidence to the situation and a clear pattern demonstration.

Moreso, if the applicant shares common characteristics with the previous cases, such as the applicant being a Syrian Armed Forces deserter and the supporting documents demonstrating previous cases of Lebanon deporting other deserters of the Syrian Armed Forces who were then tortured or forcibly disappeared in Syria.

Practical Recommendations for advocacy and litigation efforts

Taking into consideration the aforementioned legal avenues, their caselaw and challenges, in addition to the experiences of practitioners, the following recommendations may be useful to civil society actors, advocates and litigators working on the Cyprus-Lebanon-Syria pushbacks context.

- **Documentation and evidence collection:**

- ♦ **Lack of or insufficient evidence is a common issue in litigation, for this reason:**

- Focus on cases with possibility to obtain additional evidence.
- Document in bulk, as many cases as possible, with as much detail and description as possible may help give some gravity to the testimonies.

- ♦ **Limited monitoring and documentation efforts by CSOs**

- Strengthen databases on pushbacks, boat movements, chain refoulement and related human rights violations, through increased situation monitoring, data collection and analysis.
- Cooperate with other CSOs, international organizations, UN agencies, media, diplomats, donors and other relevant stakeholders to exchange data and information on the issue of pushbacks, in order to improve advocacy and litigation efforts.
- Increased funding and support to national CSOs that specialize in monitoring and documenting pushbacks, boat movements and related human rights violations.
- Provide training to national CSOs on documentation, advocacy and litigation, particularly to enable them in identifying legal issues during and post-pushback, collecting the necessary evidence that is also credible, and strategically engaging with the existing legal avenues.

- **When filing complaints before UN treaty bodies and the ECtHR:**

- ♦ Make sure to review the relevant case law to understand the Court stance on certain issues, its reasoning as well as strategies that may be helpful to replicate.
- ♦ Make sure that you exhaust all domestic remedies. Otherwise, you need a strong argumentation for not exhausting domestic remedies or else the complaint will be rejected.
- ♦ Prepare for possible cases in advance. Ensure that you have a general draft complaint and some relevant supporting documents, on hand and ready for personalization. Ensure that you have contacts in the country of asylum (Cyprus), country of residence (Lebanon) and country of origin (Syria) that you are able to coordinate with swiftly and effectively in the case of pushbacks.

- **Engage with UN mechanisms.**

- ♦ This includes filing complaints before the UN treaty bodies or the UN Special Rapporteurs. The latter is especially helpful in Lebanon as recourse to legal avenues is limited.
- ♦ This recourse may place pressure on the states, as well as establish documentation of the violations and strengthen advocacy efforts.

- ◊ Think outside the box! Do not limit your complaint to the obvious relevant Special Rapporteur or Treaty Body, engage with others that might also be relevant, such as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment or the the Committee on the Rights of the Child.
- **Engage with the Committee of Ministers.**
 - ◊ Communicate updates on Cyprus' legislation or implementation of ECtHR decisions which the Committee of Ministers may in turn communicate with Cyprus.
- **Incorporate documentations into outputs.**
 - ◊ This may include situation reports, research papers, policy briefs and papers and statements. These outputs are important to advocacy and litigation efforts, as they may be used in meetings with stakeholders, such as state representatives, EU parliament or donors. They may also be used as supporting documents before the UN and EU mechanisms.
- **Utilize the media.**
 - ◊ Incorporate documented cases of violations into media material, including reports, videos, and podcasts to bring attention of the public and the media to these violations, which may in turn place pressure on the relevant states.
 - ◊ Ensure flow of information by communicating with trusted media outlets and sharing updates and documented information as relevant (and as safe for all parties concerned, especially the victims, with their knowledge and consent). The Media can place well-needed pressure on States in cases of violations.
 - ◊ Train journalists on the relevant legal matters that will allow them to accurately identify and cover issues, particularly with regards to the criteria for the establishment of state jurisdiction and control on the boats.
- **Meet with stakeholders.**
 - ◊ Correspond or meet with relevant stakeholders to share information, recommendations, and observations. These meetings are helpful to gain insight on the issues, as well as place pressure on the State, whether Lebanon or Cyprus.
 - ◊ Stakeholders may include donors, embassies and other foreign state representatives, government officials and institutions, non-governmental institutions, UN agencies or EU parliament and institutions.
- **Do not overlook domestic efforts.**
 - ◊ It may be useful to engage with certain issues on the domestic level. For instance, in some cases, it may be valuable to rely on national laws for argumentation, such as the Code of Conduct of the internal security forces or military forces. It may also be useful to engage with the national mechanisms to prevent violations or hold the perpetrators accountable, such as the Ministry of Interior or of Defense, responsible for the acts of these forces.

- **Start small.**

- ♦ Advocacy efforts revolving around non-refoulement in Lebanon and Cyprus may sometimes fall short. CSOs and individuals could alternatively advocate on issues that impact non-refoulement, such as the issue of residency in Lebanon, the 2019 Higher Defense Council decision to deport Syrians who enter Lebanon surreptitiously after April 2019, the issue of restricted access to detainees for legal representatives, and many others.

Concluding remarks

Advocacy and litigation in the context of Cyprus-Lebanon-Syria is challenging, primarily due to the limited protection mechanisms provided for the refugees in these cases, considering that Lebanon is not a party to the 1951 Refugee Convention, nor accepts individual complaints before UN treaty bodies and does not provide effective legal remedies for refugees to appeal deportation orders on the domestic level. The most practical focus when documenting pushbacks from Cyprus to Lebanon, in addition to documenting the violations committed by Cyprus, appears to lie on documenting the general refugee situation in Lebanon, particularly the detention conditions, torture and ill-treatment and the deportations to Syria, as well as the violations that deported individuals have undergone in Syria, to link it to State responsibility of Cyprus.

The challenge is further exacerbated by the limited physical and direct evidence, and often, based on the previous pushbacks in recent years, the complete lack of physical state-provided documents that may serve as direct evidence. Practitioners then often only have circumstantial evidence that may not be sufficient for the available legal mechanisms. However, other types of evidence, especially when accumulated, may strengthen the claims.

The most effective legal mechanism for litigation in this context depends on the specific circumstances at hand, after all, they all fall short in different ways.

On one hand, complaints before the UN Treaty Bodies and particularly before the UN Committee against Torture appear to have more lenient standards for proof and for risk assessment, as well as a higher acceptance of interim measures requests and of complaints in general. However, the views of the Committee and the UN Treaty Bodies in general are not binding on States and involve a lengthy process, even in high priority cases where they may take several working days, and thus may sometimes not be practical in urgent cases involving returns. Another issue to consider is the lack of appeal which may be limiting, especially taking into consideration the lengthy process.

On the other hand, complaints before the ECtHR, while binding on the States, also involve a drawn-out process that may take years, in addition to higher inadmissibility rates and stricter standards of proof and risk assessment. However, this legal mechanism may be the most practical and effective in cases involving grave violations, especially mass cases. As for interim requests before the ECtHR, this may be the most effective remedy in pushback cases due to the short timeframe and greater urgency. With that being said, it is important to keep in mind the inability to appeal the decision, as well as the high rejection rate for interim requests, and the process, which may be faster than the process of individual

complaints before the Court, but depending on the circumstance, might still be insufficient to halt the expulsion or forced return.

In conclusion, there is not one right legal avenue and assessments for the most suitable course must be determined on a case-by-case basis. The suitability of each mechanism largely depends on the circumstances at hand, the existing evidence and the type of evidence that may be potentially acquired, the present gaps in evidence collection while assessing with the practices and views of the international bodies to determine the most effective legal avenue.

Index

The guide seeks to complement existing resources developed by other actors. For this reason, for more information on the documentation of pushbacks and the existing legal avenues in different contexts, refer to:

- Nikola Kovačević. Documenting Human Rights Violation on the Serbian-croatian Border. Guidelines for Reporting, Advocacy and Strategic Litigation. Rosa Luxemburg Stiftung. 2021.
- Border Violence Monitoring Network. Mapping legal struggles: toolkit for legal action across the Balkan routes. 2021.
- UNHCR. Toolkit on How to Request Interim Measures Under Rule 39 of the Rules of the European Court of Human Rights for Persons in Need of International Protection. 2012.

For more information on complaints before international and European bodies, you may wish to take a look at:

- Fact Sheet on Individual Complaint Procedures under the United Nations Human Rights Treaties.
- This sheet provides detailed information on the procedures for each Treaty Body and the relevant forms for submissions.
- ECtHR. Practical Guide on Admissibility Criteria. 2022.

This document provides guidance and clarification for the admissibility criteria before the ECtHR.

- Fanny de Weck. Non-refoulement under the European Convention on Human Rights and the UN Convention against Torture: The Assessment of Individual Complaints by the European Court of Human Rights under Article 3 ECHR and the United Nations Committee against Torture under Article 3 CAT (Vol. 6). BRILL. 2017.
- Hamdan. (2016). The Principle of Non-Refoulement under the ECHR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Vol. 115). BRILL. 160 <https://doi.org/10.1163/9789004319394>

These two books provide detailed information on the applicable laws, the caselaw and the practices of the main relevant legal avenues, including the Committee Against Torture and the European Court of Human Rights. For more information on interim measures before the ECtHR, you may refer to:

- ECtHR. Factsheet: Interim Measures. 2022.
- This document notably provides an overview of the Court's previous assessments of interim measures.
- ECtHR. Practice Directions Requests for Interim Measures.
- This document explains the requirements for requests and explains the necessary information that must be included in the requests, as well as other relevant practical information.
- ECtHR. Practical Information for lodging a request for interim measures.

This document provides detailed steps on how to contact the Court and lodge the complaint.

For more information on the applicable laws and the jurisprudence, you may take a look at:

- 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. OHCHR. A/HRC/47/30. 2021.
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