

The obstruction of access to asylum at the French-Italian border: A briefing for MEPs

Lack of due procedure and guidance, unlawful detention, and illegal push backs of children

Overview

- At the French-Italian border, the absence of adequate procedures, information and guidance, coupled with unlawful detention as well as the illegal push backs of minors, appear to convolute and delay prospective asylum seekers' access to the asylum procedure in Europe. This leaves them trapped in legal limbo for extended periods of time which risks exacerbating existing physical and mental health conditions.
- Many individuals will have had traumatic journeys, arriving in Europe having made the treacherous journey across the Mediterranean via Libya, where horrific accounts of violence, abuse and slavery are reported. However, rather than finding sanctuary, individuals are trapped in a bottle-neck situation at the border and face wide-spread rights violations.
- When seeking to cross the French-Italian border, individuals are faced with **a lack of proper procedure and an absence of accessible information and guidance**.
- In addition, men, women and children are being **unlawfully detained in inhumane and degrading conditions**, with minimal access to food and water and without access to medical care or legal assistance, in contravention of national and international law.
- Unaccompanied **children are being summarily pushed back over the border** to Italy, illegal under national and international law.
- As such, **access to the asylum procedure**, a right enshrined under the 1951 Geneva Convention, **is being curtailed** at the French-Italian border, leaving many vulnerable individuals in legal limbo without any clear way out of their predicament.
- Urgent action must be taken by the French and Italian Governments to ensure that all displaced men, women and children are able to access the asylum procedure and have their fundamental rights respected.
- European institutions ought to urgently investigate reports of breaches of European asylum law, as well as the alarming violation of universal human rights occurring at the border.

Background

- The passage between Italy and France was closed in 2015 due to the World Climate Summit, with the subsequent declaration of a State of Emergency following the terror attacks in Paris and Nice in 2015 and 2016 respectively¹. The State of Emergency was replaced by a new law in 2018, which effectively suspended the Schengen Agreement². Simultaneously, extremely poor reception conditions³, unduly long waiting times⁴, as well as lack of access to asylum and family reunification procedures⁵, have led large numbers of displaced individuals to attempt unauthorised border crossings into France⁶.

Lack of due procedure, information and guidance

¹ <http://www.anafe.org/spip.php?article412>

² <https://www.reuters.com/article/us-eu-france-macron/as-france-emergency-rule-ends>

³ <https://www.asylumineurope.org/reports/country/italy/reception>

⁴ <http://refugeerights.org.uk/2019/03/14/the-cycle-of-violent-push-backs-at-the-french>

⁵ <https://www.ecre.org/aida-2017-update-italy-obstacles-in-accessing-asylum-procedures-and-lack-of>

⁶ <https://www.pri.org/stories/2019-02-01/after-salvini-decree-evictions-refugees-italy-face-uncertain-future>

- Under French law, displaced people refused entry at the border must be issued with a *refus d'entrée*, while there are a number of procedures which must be followed in order to fulfil the legal obligations, including ensuring that the displaced person is informed of their rights in a language that they can understand. Proper procedure is regularly being ignored by French border police, including those who express an intention to claim for asylum.
- This is coupled with an overall lack of information and guidance available to prospective asylum seekers, leaving them trapped in legal limbo for unnecessarily long periods.
- There are also numerous reports of violent methods employed against displaced people by French border police which have resulted in serious injury.

Unlawful detention

- In the context of border closures, a so-called 'temporary detention centre' was established in 2017 in the PAF station in Menton, consisting of containers in which people found attempting to cross into France are held in places of *de facto* detention in deplorable conditions.
- Individuals are held for prolonged periods, often overnight for between twelve to fourteen hours and are reportedly often forced to sleep on the floor, with no separation between men and women or between children and adults⁷. Despite cold temperatures, displaced people are not provided with blankets and are not provided with adequate food or water, despite the long periods of time that they are held. Doors are reportedly locked at night, raising serious security concerns⁸.
- This would therefore appear to be an arbitrary deprivation of liberty, not subject to the requirements set out in national and international law.

Illegal push backs of unaccompanied children

- Moreover, reports document the continued push backs of unaccompanied children at the border⁹, including reports of changing the date of birth on entry refusal documents in order to identify them as adults, confiscating birth certificates and judging minors' age by appearance¹⁰.
- Under national and international law, children ought to be afforded the benefit of the doubt if there is a reasonable possibility that they are under-age, and placed under the protection of French authorities while age assessments take place.
- Once in France, flawed age assessments¹¹ mean that many vulnerable children are then refused formal recognition, facing destitution and an exacerbation of existing trauma. Many may choose to take matters into their own hands and risk dangerous journeys to other European countries.

Recommendations

Lack of due procedure, information and guidance

⁷ <http://www.anafe.org/spip.php?article520>

⁸ <https://www.politis.fr/articles/2018/04/visite-surprise-delus-a-la-police-aux-frontieres-de>

⁹ See e.g. https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-nowhere-but-out-refugees-migrants-ventimiglia-150618-en.pdf and <https://www.asgi.it/wp-content/uploads/2018/04/Letter-on-push-back-of-unaccompanied-minors-at-Ventimiglia.pdf>

¹⁰ <https://www.theguardian.com/world/2018/jun/14/french-border-police-accused-of-cutting-soles-off-migrant-childrens-shoes>

¹¹ <https://www.hrw.org/report/2019/09/05/subject-whim/treatment-unaccompanied-migrant-children-french-hautes-alpes>

At the European level:

- European leaders must continue to work on wider reforms of the common European asylum system including a mechanism for permanent responsibility sharing and making family reunion easier to bring about, in order to alleviate pressure on Italy as a first EU-entry country.

At the French level:

- The decision to refuse an individual entry in to France must be duly communicated to individuals in a language and format that they understand and with the opportunity to appeal such decisions within the time frame allowed under national law.
- The French government must issue unequivocal instructions to French border police to cease using unnecessary force when apprehending individuals at the border, with a focus on adopting a non-violent approach, and the right of all individuals to seek asylum. Border authorities ought to be provided with regular training which includes international human rights obligations, safeguarding and protection mechanisms for vulnerable displaced people and identification of victims of trafficking.

At the Italian level:

- The Italian government ought to take urgent steps to improve conditions at the border in Ventimiglia, including the provision of basic shelter, access to adequate food and sanitation facilities, and access to healthcare, including the availability of specially trained social workers and psychologists, trafficking specialists, and interpreters with specific provision for women and girls. Such services ought to be available regardless of immigration status.
- The Ventimiglia municipality must open an accommodation centre for children in Ventimiglia town irrespective of immigration status, with robust safeguarding systems, supported by civil society organisations, adequately staffed and includes social workers, interpreters, therapists, medics and child safeguarding specialists, and with specific provisions for girls.
- Italian authorities ought to urgently ensure the provision of increased information and guidance on Italian and EU asylum policy and procedures in a format and language that displaced are accessible to displaced people, in addition to civil society efforts.
- The Italian government must issue unequivocal instructions to Italian police forces to cease using unnecessary force when apprehending individuals at the border, with a focus on adopting a non-violent approach, and the right of all individuals to seek asylum. Border authorities ought to be provided with regular training which includes international human rights obligations, safeguarding and protection mechanisms for vulnerable displaced people and identification of victims of trafficking.

Unlawful detention:

At the European level:

- The European Commission ought to investigate the deprivation of liberty occurring at the French-Italian border to assess whether such measures are in breach of European Asylum Directives, and in violation of fundamental rights.

At the French level:

- French authorities ought to urgently instruct forces operating on the border to end the practice of depriving individuals of their liberty arbitrarily. In practice this means either the

permanent closure of the ‘temporary detention centre’ or, in line with the recent ruling by the Conseil d’État¹², assurance that officials would ensure individuals refused entry to France are not held at the border for more than four hours, after which time they must either (a) release the individual; or (b) transfer the individual to the nearest established ‘waiting zone’, where, if an individualised assessment of a case has established the necessity to keep them in detention, the authorities must communicate a duly motivated detention decision to the individual concerned, and allow for legal representation to take place.

- Conditions in the place of detention at the French-Italian border must be urgently improved in line with international standards including separate provision for men/women and adults/children, adequate access to food, water, medical care and legal representation.
- The French government and the PAF ought to allow and facilitate regular independent monitoring of the situation at the border and to regularly issue follow-up information on the measures taken to end this unlawful practice without delay.

Illegal push backs of unaccompanied minors:

At the European level:

- The Commission ought to assess French practices on the border to ensure that the rights of the child are being upheld, in particular whether age assessments are being conducted in line with international standards and best practice, particularly ensuring that children are granted the benefit of the doubt and afforded protection whilst age assessments, and any subsequent appeals, are ongoing.
- The Commission ought to exert pressure on Italy to ensure that its reception conditions and safeguards for minors are adequate and in line with national and international law and standards.

At the French level:

- The summary push backs of unaccompanied children must end. Border police must be provided with training on the rights of the child and proper procedure when encountering young people at the border, in line with national and international law and best practice. Where an individual declares as a child at the border, and where there is reasonable possibility that the person is a child, border police should transfer the individual in to the care of child protection authorities.
- The French government ought to prepare new and robust guidance for child protection authorities on how to conduct multidisciplinary age assessments in line national and international law and best practice. Age assessments ought to be undertaken with the best interests of the child, taking in to account vulnerability and existing trauma with appropriate expertise, care and support throughout the process.

At the Italian level:

- The new Ministry of the Interior ought to signal a departure from the policies of her predecessor and take active steps to improve reception centres, including those for children, across Italy, with adequate access to healthcare, psychosocial support services and access to

¹² <https://www.lacimade.org/presse/menton-des-personnes-exilees-detenues-en-toute> and <http://www.france-terre-asile.org/images/stories/publications/Ordonnance-5-juillet>

education, as well as taking steps to reduce the length of time asylum seeking men, women and children are waiting for a decision on their claim.