REFUGEE LAW INITIATIVE

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RLI Policy Brief on Externalisation

Border Externalisation: Pullback and Pushback Practices

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Refugee Law Initiative

The RLI is a unique academic centre promoting interdisciplinary research, teaching and exchange on law, policy and practice in refugee and displacement contexts. Established in 2010 at the School of Advanced Study of the University of London, the RLI works in the UK and internationally to promote new research and facilitate practical impact in this field.

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Executive Summary

Pushbacks and pullbacks are unlawful border control practices whereby migrants and asylum seekers are often forcibly returned at the sea or land borders without access to due process, in potential violation of international human rights and refugee law. These practices are typically deployed within the broader framework of externalised border management, aiming to intercept, deter, restrain, or reroute individuals before they can reach the territory of a destination country. When taking place outside a state's territorial borders and/or in cooperation between countries and/or non-state actors, these measures fall within the realm of border externalisation.

This policy brief builds upon the RLI Declaration on Externalisation and Asylum, and it outlines the legal implications of pushbacks and pullbacks in the context of externalisation.[1] Pushbacks and pullbacks raise serious legal and ethical concerns and often bypass established legal and humanitarian safeguards. Key challenges include unclear jurisdiction responsibility, minimal transparency, and weak enforcement, all of which contribute to systemic and persistent violations. Urgent reforms are needed to strengthen accountability mechanisms, enhance transparency, and ensure the protection of fundamental rights–essential for aligning with legal commitments under human rights and refugee law.

Border Control Controversies and the Legal Fragility of Pushback and Pullback Practices

Such practices are implemented across both land and maritime zones. Pushbacks refer to the interception and forcible return of individuals arriving at State borders without assessment of their international protection needs. Pullbacks (or pushbacks by proxy) refer to partner countries preventing people leaving their territory and/or intercepting them at sea and forcibly returning them to their territory on behalf of a destination State.[2]

Both practices are widely recognised as forms of border violence, posing severe threats to the safety, dignity, and fundamental rights of those affected.

As pushbacks and pullbacks increasingly become embedded in border control structures, critical concerns emerge about the legality of these practices. In principle, border control is a state function– an expression of state sovereignty governing entry and residence within a state's territory. However, States that exercise border control must conform with international law, including human rights, refugee and maritime law.

Urgent legal and policy scrutiny is of utmost importance. While border control remains a sovereign function, it must be exercised in compliance with binding international legal standards. Without reform, these practices risk normalising impunity and seriously eroding the structural integrity of the international refugee protection regime.

Examples of Pushback and Pullback Practices

Violent and unlawful practices have real consequences: for instance, six-year-old Madina Hussiny was killed after Croatian authorities forcibly returned her to Serbia. In its judgement, the ECtHR held Croatia responsible, linking its failure to investigate the incident with broader systemic human rights violations.[3] Additionally, informal agreements with third countries have[4] resulted in inhumane conditions in detention centers, marked by widespread abuse, torture, and violence.[5]

In Libya, for instance, 92% of interviewed migrants–including children–reported experiencing violence, including sexual assault and severe torture methods.[6] In Latin America, the U.S.-Mexico "Remain in Mexico" (MPP) policy has compelled asylum seekers to remain in Mexican border towns, where they are exposed to risks such as kidnapping, extortion, and sexual violence.[7] Similarly, Australia's externalisation policy involving offshore processing in Nauru and Papua New Guinea has resulted in prolonged detention and severe, often irreversible, psychological damage.[8]

These violations demonstrate that asylum-seekers subjected to pushbacks and pullbacks constitute a highly vulnerable group. This highlights the urgent need to strengthen international legal frameworks to address the accountability gaps created by such practices.

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The International Legal Framework

Refugee and Human Rights Law

States have clear legal obligations to protect refugees and asylum seekers under both international and regional frameworks. One of the most fundamental principles of refugee protection is non-refoulement– the obligation not to return people to countries where they risk serious harm such as torture or persecution. This duty is central to the 1951 Refugee Convention. Non-refoulment underpins other essential guarantees, including the right to seek asylum, to access a fair and individualised asylum process, and to be treated with dignity. Respecting this principle is essential for maintaining the integrity of global asylum systems and upholding core human rights, including the right to life, safety, and a fair asylum process.

Beyond refugee-specific rules, states also have the obligation, under international human rights treaties, to prohibit sending people back to places where they may face ill-treatment. These include the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). European human rights law adds further protections, such as the absolute and non-derogable prohibition against inhumane or degrading treatment. When states push or pull people back at borders without assessing their situation, they risk breaching multiple rights –including the right to leave a country, the right to asylum, the right to privacy and data protection, the right to life, the prohibition of collective expulsion, the rights of the child, and the right to an effective remedy. These rights must be respected at all times.

Law of the Sea

Pushbacks and pullbacks at sea raise further legal concerns. Under the International Law of the Sea, states are required to assist anyone in distress, regardless of nationality or immigration status. This duty is set out in key agreements like the Safety of Life at Sea (SOLAS) and the Search and Rescue (SAR) Convention. Under these treaties, states must coordinate their rescue efforts to ensure people are brought to a place of safety. States also cannot intercept or turn away vessels arbitrarily[9]–such actions depend on the locations (territorial waters vs international waters) and whether the vessel poses a threat.[10] The increased use of maritime pushbacks not only breaches these obligations but also contributes to avoidable deaths and disappearances at sea.

Extraterritorial Jurisdiction

Many of these practices take place outside of the territory of the externalising state, in international waters or in the territory of a cooperating state. The extraterritorial nature of these practices does not absolve states of their legal responsibility. Under international law, states are still under obligations when they exercise control over individuals or operations abroad.[11] Despite this, accountability remains limited. Legal access to courts is restricted, enforcement mechanisms are weak, and immunity clauses in agreements with state partners shield actors from scrutiny. This creates a serious accountability gap, where harmful practices continue unchecked and legal redress is often unavailable.[12] Externalisation practices rest on the flawed assumption that human rights obligations cease at a state's borders,[13] a view that contradicts international law. However, the scope of these obligations ultimately depends on the nature of the individual's connection to the state in question.[14] The European Court of Human Rights'

judgment of 6 June 2025 in S.S. and Others v. Italy (Appl. No. 21660/18), concerning Italy's involvement in Libya's 'pullback' policy, reflects this gap. The Court adopted a restrictive approach to the interpretation of its jurisdictional clause, missing an opportunity to affirm that states cannot evade human rights responsibilities by outsourcing border control. In contrast, the UN Human Rights Committee has clarified that legal obligations may still apply where state decisions foreseeably affect individuals abroad (functional jurisdiction).[15]

Recommendations

States must respect the law and protect human life

Protect human life: State actors must assist individuals in distress at sea regardless of nationality or immigration status and must coordinate rescue efforts to ensure that they prevent avoidable deaths and disembark those rescued to a place of safety, where their human rights are protected. All state authorities must prioritise human life and safety.

Avoid refoulement: States must not risk sending individuals back to places of persecution or danger of inhumane treatment. States must not stretch "safe country" provisions and must rely on updated and reliable reports of international organisations to ensure that individuals are not sent back to places of persecution or danger. Pullback agreements with unsafe countries are illegal.

Assess individualised protection needs: States must offer each individual who needs international protection meaningful access to individualised asylum application procedures. Pushback and pullback practices fail to meet this obligation.

Judicial protection: States must ensure that individuals subjected to pushbacks can effectively challenge unlawful conduct by state or non-state actors. Immunity clauses in agreements that shield actors from scrutiny must be avoided and all state actors exercising effective control beyond borders must be held accountable.

Conclusion

There is an urgent need for attention to illegal and harmful border practices of pushback or pullback that incur across both land and maritime zones. These practices are associated with border violence, death or disappearances of people attempting to cross borders. Undoubtedly, there are critical concerns about the legality of these practices. However, states attempt to evade their responsibility by carrying out pushbacks in international waters or by proxy (pullbacks).

To prevent avoidable deaths and the breach of law, states must abstain from illegal pushback and pullback practices that involve violence and often, if successful, the return of individuals to places of persecution. Instead, they must coordinate rescue efforts to save lives at sea and ensure that individuals enjoy access to a fair and individualised assessment of their protection needs.

Other policy briefs in the Externalisation Series: #1 - What is Externalisation

Endnotes

[1] Refugee Law Initiative Declaration on Externalisation and Asylum, International Journal of Refugee Law, Volume 34, Issue 1, March 2022, Pages 114–119, https://doi.org/10.1093/ijrl/eeac022; David Cantor, Nikolas Feith Tan, Mariana Gkliati, Elizabeth Mavropoulou, Kathryn Allinson, Sreetapa Chakrabarty, Maja Grundler, Lynn Hillary, Emilie McDonnell, Riona Moodley, Stephen Phillips, Annick Pijnenburg, Adel-Naim Reyhani, Sophia Soares, Natasha Yacoub, Externalisation, Access to Territorial Asylum, and International Law, International Journal of Refugee Law, Volume 34, Issue 1, March 2022, Pages 120–156, https://doi.org/10.1093/ijrl/eeac023 (thereafter, RLI Declaration on Externalisation).

[2] See also E. McDonnell, S. Chakrabarty, Policy Brief 1: What is Externalisation, M. Gkliati, S. Phillips (eds), RLI Externalisation Policy Brief Series, link forthcoming.

[3] Fehr and J. Alpes. (2024) Pushing states to evidence pushbacks: Lessons from MH v. Croatia for intersecting domestic criminal law and international human rights . Available at:https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2024/04/pushing-states-evidence-pushbacks-lessons-mh-v-croatia. Accessed on: 14/01/2025.

[4] See: El Zaidy, Zakariya, EU Migratino policy towards Libya, a policy of conflicting interests (June 2019) < https://library.fes.de/pdf-files/bueros/tunesien/15544.pdf> accessed 14.01.2025.

[5] See Border Violence Monitoring Network ("BVMN"), The Black Book of Pushbacks – Vol. I and II, 18.12.20 (BVMN, The Black Book, 2020)

[6] Barnes, Jamal, "Torturous journeys: cruelty, international law, and pushbacks and pullbacks over the Mediterranean Sea, in: Rewiev of International Studies (2022), 48, p.455.

[7] American Immigration Council. (2025). The "Migrant Protection Protocols": An explanation of the Remain in Mexico program. Washington, DC: American Immigration Council. Available at : https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols. Accessed on 11/06/2025

[8] Matera, M., Tubakovic, T., & Murray, P. (2023). Is Australia a model for the UK? A critical assessment of parallels of cruelty in refugee externalization policies. Journal of Refugee Studies, 36(2), 271–293. https://doi.org/10.1093/jrs/fead016

[9] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 45.

[10] Ibid art 45 and Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 16 September 1963, entered into force 2 May 1968) ETS 46, art 4.

[11] Al-Skeini and Others v UK App no 55721/07 (ECHR, 7 July 2011) paras 138–139; UN Human Rights Committee. (2004). General Comment No. 31 [80] on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 10.

Endnotes

[12] Salvatore Fabio Nicolosi, 'Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law' (2024) 71 Netherlands International Law Review 1, p. 15.

[13] This territorial interpretation is reflected in treaties like the ICCPR and ECHR: UN General Assembly, International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966, Art. 2(1) binding every State party 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant'; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5, 4 November 1950, Art. 1, binding the contracting parties to 'secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention'.

[14] Salvatore Fabio Nicolosi, 'Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law' (2024) 71 Netherlands International Law Review 1, p. 11.

[15] UN Human Rights Committee, General Comment No 36: Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (30 October 2018) UN Doc CCPR/C/GC/36, para 63.

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