

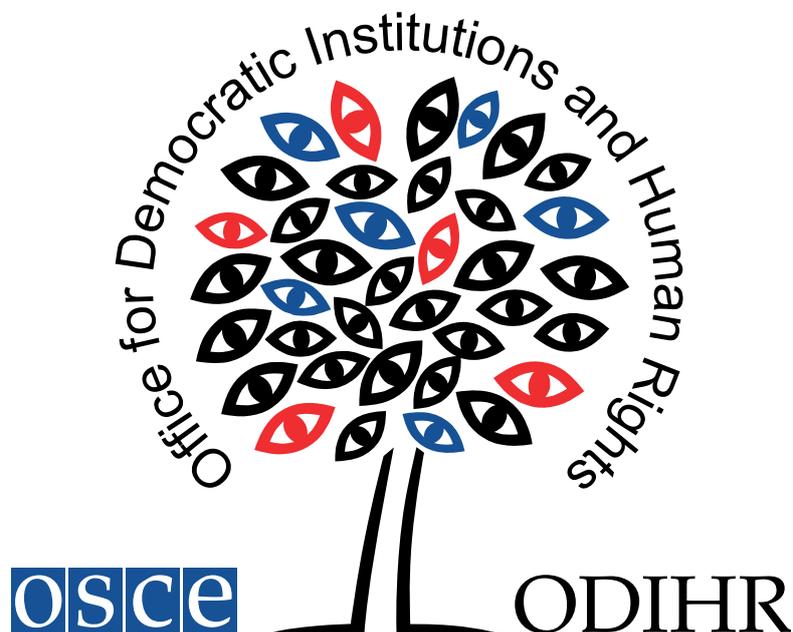


Office for Democratic Institutions and Human Rights

**BORDER POLICE MONITORING IN THE OSCE REGION:
UPHOLDING A HUMAN RIGHTS APPROACH TO
MIGRATION**

**Online Meeting
13 April 2021**

OSCE/ODIHR Meeting Report



**Warsaw
May 2021**

This report should not be interpreted as comprising official OSCE recommendations based on a consensus decision, an opinion of the OSCE Office for Democratic Institutions and Human Rights or of any particular OSCE participating State. The content of this report reflects opinions expressed by participants in a meeting which took place online on 13 April 2021.

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BORDER POLICE MONITORING IN THE OSCE REGION: UPHOLDING A HUMAN RIGHTS APPROACH TO MIGRATION

Online Meeting 13 April 2021

BACKGROUND TO THE MEETING

The meeting was organized by the OSCE Office on Democratic Institutions and Human Rights (ODIHR) as part of its work to assist OSCE participating States to meet OSCE commitments on human rights, in particular the human rights of migrants and other persons crossing borders. This online event brought together 69 participants (44 women and 25 men) from 17 OSCE participating States (Belarus, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Kyrgyzstan, North Macedonia, Poland, Portugal, Romania, Slovenia, Serbia, Ukraine, the United Kingdom and Uzbekistan), including experts and representatives from national authorities, human rights bodies, international organizations and civil society, as well as OSCE field operations and the OSCE Border Staff Management College. (Annex 2 provides a full list of participants.)

ODIHR develops guidance and recommendations to help identify and promote good practices in the fields of migrant integration, human rights and tolerance and non-discrimination as part of efforts to strengthen implementation of OSCE commitments across the region (selected commitments relating to migration are included in Annex 3).¹ Responding to the continuing challenges and divisions linked to protection of migrant rights, in particular at borders, in 2020 ODIHR commissioned research to collect good practices in the independent monitoring of border police. ODIHR organized this online event as a linked initiative to promote awareness of the importance of such monitoring through discussing the findings and recommendations of the research.

The research was presented in the form of a draft report entitled “Border Police Monitoring in the OSCE Region: A discussion of the need and basis for human rights monitoring of border police practices”. This report was circulated to participants before the meeting in order to inform their discussions. Discussion at the meeting, particularly about recommendations to policy-makers and practitioners, in turn informed the draft report which is now being finalised for external publication.

AIMS OF THE MEETING

The meeting was organized with two main objectives:

- i. to raise awareness among relevant stakeholders about the function and requirements of independent border police monitoring, the challenges and limitations that independent border police monitors face, and of good practices drawn from across the OSCE region in monitoring the work of border police;

¹ A number of past ODIHR meeting reports, policy briefs, guidance and training materials related to the field of migration are available at: <https://www.osce.org/odihr/migration>.

- ii. to discuss recommendations for ensuring effective human rights monitoring at borders with a view to guiding the work of national stakeholders and international organizations, and to disseminate these through the subsequent publication of a report on the topic.

MEETING SUMMARY

The meeting was held online as a one-day event. Two sessions on aspects of the topic were held, *Border police monitoring: function and requirements* and *Border police monitoring: good practices*, to share experience and perspectives of monitoring the work of border police from different participating States. These sessions were followed by a final session devoted to discussing recommendations for ensuring effective human rights monitoring at borders. (The agenda of the meeting is provided in Annex 1).

Participants included representatives of civil society organizations and their networks, of national human rights institutions (NHRIs), the European Network of National Human Rights Institutions, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations refugee agency (UNHCR), the European Parliament, the European Union border agency FRONTEX, the European Union Agency for Fundamental Rights (FRA), the OSCE Border Management Staff College, ODIHR, and OSCE field operations. (The list of participants in the meeting is provided in Annex 2).

Opening

Ms. Meaghan Fitzgerald, Acting Head of the Democratization Department at ODIHR, opened the event, outlining the relevance of OSCE commitments and action on border management and monitoring, and ODIHR's work on this issue. She emphasized the importance of upholding a human rights-based approach to border monitoring, highlighted the OSCE-commissioned expert report to be presented at the meeting, and noted that the meeting was a timely opportunity to discuss a very topical issue, as recent reports have highlighted the need for enhanced independent monitoring in border areas. She welcomed the representatives of United Nations and European Union agencies, participating States, civil society and OSCE institutions participating in the event, and expressed openness to continued co-operation in future on this and other topics.

Session 1: Border police monitoring: function and requirements

Mr. Ihar Kuzminich, Chief of Training and Education at the OSCE Border Management Staff College, moderated the first session, opening by highlighting the relevance of border police monitoring and protecting human rights at borders for the OSCE Border Security and Management Concept adopted at the OSCE Ministerial meeting in Ljubljana in 2005.²

Mr. Todor Gardos, independent expert working with ODIHR, delivered the first presentation, presenting the ODIHR-commissioned research on human rights-based approaches to independent border monitoring and observations from the OSCE region. This research had been circulated to participants ahead of the event as the working paper, "Border Police Monitoring in the OSCE Region: A discussion of the need and basis for human rights

² [Border Security and Management Concept | OSCE](#).

monitoring of border police practices”. Mr. Gardos outlined the rationale and aim of the research to stimulate further dialogue on human rights monitoring at borders, based on a better understanding of current practices, challenges and opportunities. In particular, he noted the robust human rights standards and OSCE commitments on human rights in the context of border management and migration, the existence of transferable knowledge on monitoring methodology, and the various good practices presented in the report. Mr. Gardos also discussed key attributes of the monitoring concept proposed in the report, one that is based on a broad, inclusive and multi-functional understanding of monitoring that is adaptable to specific operational contexts, and which is independent, professional and efficient. He acknowledged the positive role that the OSCE and participating States can have in promoting and using existing training and capacity-building initiatives (e. g. the Border Management Staff College), to build trust between stakeholders, provide technical support and encourage co-operation between participating States, NHRIs, ombuds institutions, international organizations and NGOs. He emphasized that the report provided participating States with actionable recommendations to spur action in the short term while working towards sustainable co-operation among stakeholders at all levels in the longer term.

Ms. Tineke Strik, Member of the European Parliament, presented EU perspectives and recent discussions on independent border police monitoring. She opened by welcoming the topic of the OSCE-commissioned research and meeting, noting these as very useful in relation to the significant challenges currently experienced. Referring to evidence of co-ordinated pushbacks and to the factors which are contributing to these problems, including the pressure resulting from the Dublin regulation on Schengen border countries and unequal distribution of responsibilities, she underlined the absence of a corrective response from the EU. Noting the report she produced in 2019 for the European Parliament and its positive reception by the Committee of Ministers, Ms. Strik spoke about the wider lack of political will and a climate of impunity which is affecting all external borders, and the pressing need for improved monitoring and protection of fundamental rights. She discussed the new proposed EU Pact on Migration and Asylum and the positive element it includes regarding independent national monitoring mechanisms, while highlighting that the scope and access of these mechanisms need to be expanded to all parts of external borders and their independence clarified at EU level. She concluded by welcoming moves to strengthen internal FRONTEX monitoring of its own operations, but also noted the need for independent monitoring of FRONTEX and proposed that NHRIs should be involved in this.

Ms. Jelena Sesar, Amnesty International (AI), spoke next on the accountability of border management authorities. Reviewing the range of rights which must be respected at borders, Ms. Sesar noted that persistent and widespread violations of human rights are often reported in countries which do not have appropriate monitoring of border police operations by non-state actors, and that in countries where no formal agreement for monitoring is in place there are cases where non-state actors who have attempted to monitor the actions of border police have faced persecution. Highlighting the need for robust internal control within law enforcement and for external independent monitoring, she noted that AI had identified trends related to human rights violations which included weak internal control or oversight of law enforcement, inadequate knowledge among law enforcement staff of what rights their operations should safeguard, and a reluctance for or absence of corrective action from the judicial system or intergovernmental organizations.

Ms. Edyta Tuta, Office of the United Nations High Commissioner for Human Rights (OHCHR), shared perspectives on the national monitoring mechanisms anticipated in the

European Commission's proposal for an EU Pact on Migration and Asylum. She highlighted strengthening the independence of future human rights monitoring mechanisms as a clear priority and underlined that OHCHR has been sharing recommendations in this area and calling for government action to strengthen monitoring and respect for human rights at border areas for several years. She spoke about the recent consultation process undertaken jointly by OHCHR and UNHCR on the EU proposals, and outlined its conclusions, including the needs for any monitoring mechanisms to be independent in law and practice, and in operational and financial terms, to have a wide and inclusive scope with access to all areas and documentation, and to have a mandate which allows the mechanism to be effective, enhance accountability and have improved practice as the end goal. She highlighted the relevance of the Paris Principles and other international models, including the importance of guidance from FRA on the establishment of independent national monitoring mechanisms, and underlined the importance of a system which provides for synergy among existing mechanisms and NHRIs.

Ms. Eva Tzavala, Chair of the Asylum and Migration Working Group at the European Network of NHRIs (ENNHRI), presented on the role of NHRIs in protecting human rights of migrants at the borders. Outlining the role of NHRIs and their broad mandate to defend human rights, and their unique independent role between civil society and government, she noted the key NHRI functions of advising, monitoring, and reporting, and promoting a human rights-based culture. She presented examples of different NHRIs' work on migrants' rights at borders, highlighting reporting undertaken by the Armenian, German and French NHRIs; monitoring of forced returns and deprivation of liberty by the Spanish, Croatian, Serbian, Slovenian, Estonian and Portuguese NHRIs; work to promote migrants' rights to the public, authorities and among migrants by the Greek, Azerbaijani and Armenian NHRIs; and work on legal challenges, receiving complaints and issuing recommendations by the Slovenian, French, Polish and Croatian NHRIs. She concluded by noting that ENNHRI is currently developing guidance on monitoring human rights of migrants at borders and highlighted the recent ENNHRI Opinion on the EU Pact proposals which includes ten recommendations on the new monitoring mechanisms proposed.

Discussion during the **question and answer session** that followed included points regarding the value of formal mandates for monitoring bodies to help link directly international human rights obligations and border management and to ensure access, particularly given the tendency to militarize border areas, as well as the importance of genuine independence of monitoring. Participants also highlighted the value of strengthening existing human rights monitoring bodies rather than creating new ones specifically focused on borders, especially as working with existing bodies could incorporate National Preventive Mechanisms (NPMs) and link to the structures established for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Session 2: Border police monitoring: good practices

Dr. Joanna Fomina, a migration expert working with ODIHR, opened the second session with points on the key elements required for border police monitoring to be effective. She highlighted the importance of considering a number of aspects, including: establishing effective channels of communication, co-ordination and co-operation between various institutions; ensuring access to various locations that are not normally open to the public; ensuring the safety of the monitors; securing the resources necessary for

monitoring; and, the subsequently use of the monitoring findings for advocacy to achieve the required policy and policy practice change to better protect human rights at borders.

Mr. Miha Nabergoj, Adviser at the Slovenian Ombudsman Office, made the first presentation, sharing Slovenian experiences of their ‘Ombuds+’ border monitoring formula. He explained that the Slovenian Human Rights Ombudsman performs NHRI and NPM functions and has a wide range of powers to conduct investigations and access all facilities and official records. He noted that in general the Ombudsman is well recognized by the Slovenian authorities as a necessary element of standard oversight, and that co-operation is generally very good, with their monitoring benefitting from easy access to physical spaces and information.

Mr. Simon Campbell, Border Violence Monitoring Network, presented on the Network’s experiences of gathering monitoring data for the ‘Black Book of Pushbacks’ published in 2020.³ He outlined the research and monitoring methodology used, which blends records of reported violations at green borders (un-demarcated stretches of border, often in rural or forested areas) and other internal areas with interview data and an open source, anonymous system to gather first-hand reports from whistle-blowers and people on the move at different points on migration routes. He explained that comparing data from different sources in multiple countries over the last four years has allowed the Network to map the evidence base for linked or ‘chain’ pushbacks (where migrants are pushed back across successive borders through co-ordinated action among personnel from different border authorities), and that this practice continues and has increased during the pandemic.

Ms. Irene Teodor, the Romanian mission of the Jesuit Refugee Service (JRS), shared with participants the experiences of JRS in inter-agency co-operation for comprehensive border monitoring in Romania. The JRS is the only NGO undertaking border monitoring in Romania and is able to do this through partnership with UNHCR on the basis of UNHCR’s memorandum of understanding (MoU) with the Romanian border police. The MoU allows UNHCR and its implementing partners to monitor all points of concern, including border crossings and detention, on the basis of prior requests for access, to undertake targeted and urgent intervention and to provide legal assistance. While the arrangement has many positive aspects, Ms. Teodor also noted the limitations of it being based on an MoU which either party can dissolve at any point, which has a restrictive function on publication of full reports and which provides that the mechanisms for follow up on recommendations are handled internally by the police without much transparency. She noted that the JRS’s work on the ground often includes an ‘on the job’ training element with border police, and that they are currently working with UNHCR and the police on the development of training materials on refugee rights to help build police capacity in this area.

Mr. Kirill Kofanov, the NGO Human Constanta (Belarus), shared the NGO’s experience of cross-border NGO co-operation on monitoring, including how their co-operation with Polish civil society helped to address barriers in accessing border areas. He outlined the support Human Constanta offers to refugees, recording concerns through in-person interviews and providing advice and guidance on the process of application for refugee status in Poland. Mr. Kofanov noted Human Constanta’s cross-border links with the Polish NGO Association for Legal Intervention; as a result of their co-operation a number of court rulings have upheld

³ [Launch Event: The Black Book of Pushbacks – Border Violence Monitoring Network](#)

refugee claims and recognized that rights have been violated, with corresponding subsequent instructions to border officials to improve their approaches to processing asylum claims.

The subsequent **question and answer session** discussed various aspects of evidence collection, including strategies to collect forensic evidence that could be used in court cases and to raise migrant awareness of strategies to document their own presence in certain countries and experiences of rights violations. Participants also raised the issue of shrinking space for civil society action to monitor and advocate for the human rights of migrants and the trend towards criminalization of human rights defenders' work. Equally, participants underlined the importance of co-operation with government agencies, noting that without trust and agreement on monitoring it is unlikely that monitoring efforts will be successful in improving practices and respect for human rights.

Session 3: Recommendations

Moderated by **Ms. Chrissie Hirst, a consultant working with ODIHR**, the final session of the event focused on discussing and developing recommendations relevant to improved border police monitoring.

At the start of the session, **Mr. Todor Gardos, an independent expert working with ODIHR**, presented the recommendations to participating States contained in the report circulated to participants ahead of the meeting and presented in Session 1 (the working paper "Border Police Monitoring in the OSCE Region: A discussion of the need and basis for human rights monitoring of border police practices"). He emphasized that the recommendations were grounded in existing obligations and commitments of participating States, and that the learning from current practices had been used to identify key actions to address shortcomings and promote good practices.

Mr. Gardos provided an overview of the four areas in which the report proposed recommendations to participating States, focusing on specific actions through which the concept of border police monitoring as discussed in the report could be further developed, mainstreamed and supported by States. He presented the draft recommendations in four key areas, as follows:

- i. Ensuring political support for monitoring and protection of human rights at borders.
- ii. Ensuring an enabling environment for monitoring: through laws and policies, and resources committed to genuinely involve civil society in monitoring, and to address cases where their work has been hindered.
- iii. Ensuring the functional independence and efficiency of monitors: to guarantee that monitoring can reach all border management activities, is not subject to restrictions and can fulfil its core functions, including that its findings can result in serious follow-up actions.
- iv. Promoting co-operation and capacity-building internationally: participating States committing resources to document and share learning from national experience on monitoring co-operation, to promote good practices, and to fund capacity-building for stakeholders.

Ms. Hirst invited participants to share their thoughts and reflections on the recommendations, and to share any proposals to enhance them. During the exchange in the following **plenary discussion** participants highlighted the relevance of different strands of current policy and advocacy work on the issue of human rights monitoring at borders, including recent work by FRA, the opinion produced by ENNHRI, the consultation led by OHCHR and UNHCR, and other contributions from civil society.

Participants also underlined the importance of accountability in relation to monitoring mechanisms, and that it is essential that such mechanisms provide for monitoring reports to lead to action, redress and positive change, including through links to prosecutorial agencies and judicial processes. Recent case law was discussed, including rulings which led to sanctioned re-entry and positive changes to state practices. Such accountability must reach across borders and be supported by co-operation arrangements, as those seeking justice may no longer be in the country where the violation occurred.

The importance of monitors having access to all relevant documentation was emphasized, and participants noted that this should include technical records such as video recordings and the records from motion detector equipment. Equally, the importance of monitors having rapid access to forensic analysis to secure evidence was underlined – and in this respect participants also highlighted the value of including specialists such as medical professionals among monitoring staff.

The need for protection for human rights defenders was discussed, with the issue noted of some monitors facing criminal charges as a result of their work to gather information on human rights violations. Participants exchanged their experiences of forming groups or networks of NGOs to facilitate monitoring, share methodology and offer more support to monitors. ODIHR's training course for human rights defenders was mentioned in this respect, in particular the modules related to safety and security, including digital security of information and the use of open source applications.

Final comments concerned the overriding importance of political will and support for independent monitoring of border policing, identifying this as a key area for advocacy and lobbying as in the absence of strong political will, effective monitoring will be very unlikely to succeed.

Concluding remarks

Ms. Meaghan Fitzgerald, Acting Head of the Democratization Department, ODIHR, concluded the meeting by thanking all speakers and participants for their valuable contributions and insights. She highlighted key points emphasized in the event's discussions, not least the importance of political will, as well as the value of formal agreements and mandates and of co-ordination among different mechanisms and stakeholders. Observing that discussions underlined the independence of monitors as a vital factor, she also noted the consensus among participants on the importance of systems which are able to link monitoring recommendations with action to address shortcomings, and which thereby contribute to enhanced protection of human rights and freedoms.

ANNEX 1: AGENDA

**BORDER POLICE MONITORING IN THE OSCE REGION:
upholding a human-rights approach to migration
Webinar, 13 April 2021**

Opening	09:00
Welcome and introductions Ms. Meaghan Fitzgerald, Acting Head of Democratization Department, ODIHR	09:00-09:15
I. Border police monitoring: function and requirements Mr. Todor Gardos, independent expert – human-rights-based approaches to independent border monitoring, observations from OSCE region Ms. Tineke Strik, Member of European Parliament – EU perspectives and recent discussions on independent border police monitoring Ms. Jelena Sesar, Amnesty International – accountability of border management authorities Ms. Edyta Tuta, Office of the United Nations High Commissioner for Human Rights, OHCHR – perspectives on the national monitoring mechanisms in the EC’s proposal for an EU Pact on Migration and Asylum Ms. Eva Tzavala, Chair of Asylum and Migration Working Group, ENNHRI – the role of NHRIs in protecting human rights of migrants at the borders Moderator: Mr. Ihar Kuzminich, OSCE Border Management Staff College	09:15-10:35
Coffee Break	10:35-10:45
II. Border police monitoring: good practices Mr. Miha Nabergoj, Adviser, Ombudsman Office, Slovenia – ‘Ombuds+’ border monitoring formula Mr. Simon Campbell, Border Violence Monitoring Network – the ‘Black Book of Pushbacks’ Ms. Irene Teodor, the Romanian mission of the Jesuit Refugee Service – inter-agency co-operation for comprehensive border monitoring Mr. Kirill Kofanov, Human Constanta (Belarus) – experience of cross-border NGO co-operation on monitoring Moderator: Ms. Joanna Fomina, Migration Expert, OSCE ODIHR	10:45-11:55
Coffee Break	11:55- 12:05
III. Recommendations Mr. Todor Gardos, independent expert – preliminary recommendations on border police monitoring Moderator: Ms. Christine Hirst, OSCE ODIHR	12:05-12:50
Concluding remarks Ms. Meaghan Fitzgerald, Acting Head of Democratization Department, ODIHR	12:50-13:00
Close	13:00

ANNEX 2: LIST OF PARTICIPANTS

Speakers (in order of presentation):

Ms. Meaghan Fitzgerald, Acting Head of Democratization Department, OSCE/ODIHR

Mr. Ihar Kuzminich, OSCE Border Management Staff College

Mr. Todor Gardos, Independent Expert

Ms. Tineke Strik, Member of European Parliament

Ms. Jelena Sesar, Amnesty International

Ms. Edyta Tuta, Office of the United Nations High Commissioner for Human Rights

Ms. Eva Tzavala, Chair of Asylum and Migration Working Group, ENNHRI

Dr. Joanna Fomina, Migration Expert Consultant, OSCE/ODIHR

Mr. Miha Nabergoj, Adviser, Ombudsman Office, Slovenia

Mr. Simon Campbell, Border Violence Monitoring Network

Ms. Irene Teodor, the Romanian mission of the Jesuit Refugee Service

Mr. Kirill Kofanov, Human Constanta, Belarus

Ms. Christine Hirst, Consultant, OSCE/ODIHR

Participants (in alphabetical order):

Ms. Rebecca Agule, Legal Adviser, Major Crimes, Human Dimension/Rule of Law, OSCE Mission to Bosnia and Herzegovina

Ms. Kristiina Albi, Senior Adviser, Law Enforcement Affairs Department, Office of the Chancellor of Justice, Estonia

Ms. Daniela Albu, Editor / Researcher, Romanian Institute for Human Rights

Ms. Manal Al Chaarani, Legal Adviser, Asylum and Migration to the EU, International Committee of the Red Cross (ICRC)

Mr. Gabriel Almeida, Human Rights Officer, European Network of National Human Rights Institutions (ENNHRI)

Ms. Maddalena Avon, Centre for Peace Studies, Croatia

Ms. Irene Bellomo, Human Rights Trainee, European Network of National Human Rights Institutions (ENNHRI)

Mr. Nabil Benbekhti, UNHCR Geneva, Bureau for Europe

Ms. Beatrice Berna, Public Relations Inspector, the Romanian Institute for Human Rights

Ms. Sofia Botzios, Adviser on Migration, Freedom of Movement and Human Contacts, Democratization Department, OSCE/ODIHR

Ms. Inês Carreirinho, Co-ordinator, Portuguese Refugee Council

Mr. Dawid Cegiela, Expatriate Services Legal Officer, FRONTEX European Border and Coast Guard Agency

Ms. Izabela Cernavodeanu, Lawyer, NPM counsellor, Romania

Ms. Nicoleta Constantinescu, NPM Romanian Ombudsman

Mr. Izmir Đidić, Border Police of Bosnia and Herzegovina

Ms. Nina Egger, Fundamental Rights Specialist, FRONTEX European Border and Coast Guard Agency

Ms. Sanja Fitzgerald, National Programme Officer, Department for Security and Cooperation, OSCE Mission to Bosnia and Herzegovina

Ms. Aleksandra Gacyk-Bugajska, Interim Administrative Assistant, Fundamental Rights Office, FRONTEX European Border and Coast Guard Agency

Mr. Karim Ghezraoui, Chief, Groups and Accountability Section, Thematic Engagement and Special Procedure Division, Office of the High Commissioner for Human Rights

Mr. Mykola Gnatovskyy, former President, European Committee for the Prevention of Torture

Ms. Inela Hadžimešić, National Legal Officer, Human Rights Section, Human Dimension Department, OSCE Mission to Bosnia and Herzegovina

Mr. Amir Ishmatov, National Anti-Trafficking Officer, Human Dimension Department, OSCE Programme Office in Bishkek

Ms. Laura Jaffrey, Adviser on Torture Prevention, Human Rights Department, OSCE/ODIHR

Mr. Haris Jaganjac, Border Police of Bosnia and Herzegovina

Ms. Elena Karekla, Officer, Office of the Commissioner for Administration and Protection of Human Rights (Ombudsman), Cyprus

Mr. Rashid Khasanov, Senior Admin/Programme Assistant, UNHCR

Ms. Jane Kilpatrick, Researcher in International Human Rights and Law, Statewatch, United Kingdom

Dr. Klavs Kinnerup Hede, Director of International Relations, Danish Parliamentary Ombudsman

Mr. Sando Kitanov, Senior Organized Crime Advisor, Serious and Organized Crime Section, Department for Security and Public Safety, OSCE Mission in Kosovo

Mr. Ivan Kochovski, Regional Support to Protection-Sensitive Migration, Management in the Western Balkans and Turkey, International Organization for Migration (IOM), North Macedonia

Ms. Annegret Kohler, FRONTEX European Border and Coast Guard Agency

Ms. Evgenia Kouniaki, Lawyer, HumanRights360

Ms. Danica Kovačević, Border Police of Bosnia and Herzegovina

Mr. Volodymyr Krut, Head of the Unit of Citizenship, Political Rights and Rights of National Minorities, Office of the Ukrainian Parliament Commissioner for Human Rights

Mr. Mathieu Lemoine, Project Officer (Human Dimension), OSCE Project Co-ordinator in Uzbekistan

Ms. Anne-Katrin Lothar, Consultant, Democratization Department, OSCE/ODIHR

Ms. Elizabeth Mensah, Myria, Belgian Federal Migration Centre

Mr. Tamas Molnar, Programme Officer-Legal Researcher, FRA European Union Agency for Fundamental Rights

Mr. Massimo Moratti, Amnesty International

Ms. Maria Paraskeva, HumanRights360

Ms. Klara Paro, Trainee, Office of the Secretary General's Special Representative on migration and refugees, Council of Europe

Mr. Jari Pirjola, Principal Legal Adviser, Member, European Committee for the Prevention of Torture

Ms. Cristina Pugnale, Policy Trainee, UNHCR

Ms. Urša Regvar, Legal Advisor, Legal-Informational Centre for NGOs, Slovenia

Ms. Jennifer Roberts, Assistant Project Officer, Human Rights Department, OSCE/ODIHR

Ms. Lorena Isla Rodriguez, Regional Protection Officer, Bureau for Europe, UNHCR

Ms. Mihaela Sîrbu, NPM Romanian Ombudsman

Ms. Rita Stafejeva, Administrative Assistant, Democratization Department, OSCE/ODIHR

Ms. Tina Stavrinaki, Postdoctoral Researcher International Human Rights Law – Hate Law Practice, Law Department, University of Cyprus

Ms. Iryna Sushko, Executive Director, 'Europe without barriers', Ukraine

Ms. Milica Svabic, klikAktiv - Center for Development of Social Policies, Serbia

Mr. Murad Ullah, Protection Officer, Protection Section, Regional Bureau for Europe, UNHCR

Ms. Svitlana Velychanska, Head of the Department for Monitoring Equal Rights and Freedoms, Office of the Ukrainian Parliament Commissioner for Human Rights

Mr. Nicolae Voicu, Adviser, NPM Romania Ombudsman

Mr. Daniel Witko, Helsinki Foundation for Human Rights, Poland

Ms. Hanna Yasyuk, Senior Specialist, Unit of Citizenship, Political Rights and Rights of National Minorities, Office of the Ukrainian Parliament Commissioner for Human Rights

ANNEX 3: SELECTED OSCE COMMITMENTS IN THE AREA OF THE PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS AND MIGRANT INTEGRATION

Since the 1975 Helsinki process OSCE participating States realized that increasing legal migration in the OSCE region has not only been beneficial both for host countries and migrants themselves, but has also given rise to a number of economic, social, human and other challenges⁴. Gradually the OSCE participating States acknowledged that some of those challenges should be addressed by means of special migrant integration policies.

Therefore, over more than 40 years, the OSCE participating States have agreed to a number of commitments in the field of migrant integration. These commitments relating to the so-called human dimension of the OSCE are contained in an ever-growing set of documents adopted by CSCE/ OSCE Summits and other political forums.

The OSCE commitments form the basis of the work of the Organization and were developed jointly and adopted unanimously by all participating States. They establish clear standards for the participating States in their treatment of each other and of all individuals within their territories.

Helsinki 1975 (Co-operation in the Field of Economics, of Science and Technology and of the Environment)

The participating States,

Considering that the movements of migrant workers in Europe have reached substantial proportions, and that they constitute an important economic, social and human factor for host countries as well as for countries of origin, Recognizing that workers' migrations have also given rise to a number of economic, social, human and other problems in both the receiving countries and the countries of origin,

Taking due account of the activities of the competent international organizations, more particularly the International Labour Organisation, in this area, are of the opinion that the problems arising bilaterally from the migration of workers in Europe as well as between the participating States should be dealt with by the parties directly concerned, in order to resolve these problems in their mutual interest, in the light of the concern of each State involved to take due account of the requirements resulting from its socio-economic situation, having regard to the obligation of each State to comply with the bilateral and multilateral agreements to which it is party, and with the following aims in view:

- to encourage the efforts of the countries of origin directed towards increasing the possibilities of employment for their nationals in their own territories, in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin concerned;
- to ensure, through collaboration between the host country and the country of origin, the conditions under which the orderly movement of workers might take place, while at the same time protecting their personal and social welfare and, if appropriate, to organize the recruitment of migrant workers and the provision of elementary language and vocational training;
- to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions;
- to endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment;
- to regard with favour the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of their employment;
- to confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and the host country;
- to ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;
- to bear in mind that migrant workers, particularly those who have acquired qualifications, can by returning to their countries after a certain period of time help to remedy any deficiency of skilled labour in their country of origin;
- to facilitate, as far as possible, the reuniting of migrant workers with their families.

Madrid 2007 (Decisions: Decision No. 10/07 on Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding)

⁴ Section "Economic and social aspects of migrant legal" of the Final Act of the Conference on Security and Co-operation in Europe (Helsinki 1975).

The Ministerial Council,
(...)

Recognizing that manifestations of intolerance and discrimination can undermine the efforts to protect the rights of individuals, including migrants, refugees and persons belonging to national minorities and stateless persons,
(...)

7. Calls on participating States to protect migrants legally residing in host countries and persons belonging to national minorities, stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance and to elaborate or strengthen national strategies and programmes for the integration of regular migrants, which also requires active engagement of the latter;
(...)

Vienna 1989 (Co-operation in the Field of Economics, of Science and Technology and of the Environment)

(40) The participating States emphasize the need for effective implementation of the provisions of the Final Act and the Madrid Concluding Document relating to migrant workers and their families in Europe. They invite host countries and countries of origin to make efforts to improve further the economic, social, cultural and other conditions of life for migrant workers and their families legally residing in the host countries. They recommend that host countries and countries of origin should promote their bilateral co-operation in relevant fields with a view to facilitating the reintegration of migrant workers and their families returning to their country of origin.

(41) The participating States will (...) consider favourably applications for family reunification as well as family contacts and visits involving migrant workers from other participating States legally residing in the host countries.

(42) The participating States will ensure that migrant workers from other participating States, and their families, can freely enjoy and maintain their national culture and have access to the culture of the host country.

(43) Aiming at ensuring effective equality of opportunity between the children of migrant workers and the children of their own nationals regarding access to all forms and levels of education, the participating States affirm their readiness to take measures needed for the better use and improvement of educational opportunities. Furthermore, they will encourage or facilitate, where reasonable demand exists, supplementary teaching in their mother tongue for the children of migrant workers.

(44) The participating States recognize that issues of migrant workers have their human dimension.

Copenhagen 1990

(22) The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context, they

(22.1) - agree that the protection and promotion of the rights of migrant workers are the concern of all participating States and that as such they should be addressed within the CSCE process;

(22.2) - reaffirm their commitment to implement fully in their domestic legislation the rights of migrant workers provided for in international agreements to which they are parties;

(22.3) - consider that, in future international instruments concerning the rights of migrant workers, they should take into account the fact that this issue is of importance for all of them;

(...)

Paris 1990 (A New Era of Democracy, Peace and Unity)

We recognize that the issues of migrant workers and their families legally residing in host countries have economic, cultural and social aspects as well as their human dimension. We reaffirm that the protection and promotion of their rights, as well as the implementation of relevant international obligations, is our common concern.

Moscow 1991

(38) The participating States recognize the need to ensure that the rights of migrant workers and their families lawfully residing in the participating States are respected and underline their right to express freely their ethnic, cultural, religious and linguistic characteristics. The exercise of such rights may be subject to such restrictions as are prescribed by law and are consistent with international standards.

(38.1) They condemn all acts of discrimination on the ground of race, colour and ethnic origin, intolerance and xenophobia against migrant workers. They will, in conformity with domestic law and international obligations, take effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers and adopt, if they have not already done so, measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred.

(38.2) They will adopt appropriate measures that would enable migrant workers to participate in the life of the society of the participating States.

(38.3) They note that issues which concern the human dimension of migrant workers residing on their territory could, as any other issue of the human dimension, be raised under the human dimension mechanism.

Helsinki 1992 (Decisions: VI. The Human Dimension)

The participating States:

(...)

(36) Reiterate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the importance of implementing all OSCE commitments on migrant workers and their families lawfully residing in the participating States;

(37) Will encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside. To this end, they will seek to offer, *inter alia*, measures to facilitate the familiarization of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside so as to enable them to participate in the life of the society of the host country;

(38) Will, in accordance with their domestic policies, laws and international obligations seek, as appropriate, to create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers.

Budapest 1994 (Decisions: VIII. The Human Dimension)

31. They [*OSCE participating States*] will continue to promote the integration of migrant workers in the societies in which they are lawfully residing. They recognize that a successful process of integration also depends on its active pursuit by the migrants themselves and decided therefore to encourage them in this regard.

Maastricht 2003 (Decisions: Decision No. 4/03 on Tolerance and Non-discrimination)

The Ministerial Council

(...)

11. Undertakes to combat discrimination against migrant workers. Further undertakes to facilitate the integration of migrant workers into the societies in which they are legally residing

(...)

Sofia 2004 (Decisions: Annex to Decision No. 12/04 on Tolerance and Non-discrimination;

Permanent Council Decision No. 621: Tolerance and the Fight against Racism, Xenophobia and Discrimination)

The participating States commit to:

(...)

- Take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers;

- Consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers to society;

(...)

Ljubljana 2005 (Decisions: Decision No. 2/05 on Migration)

The Ministerial Council,

Reaffirming the commitments related to migration, and in particular regarding migrant workers, and other relevant commitments (...),

Recognizing the increasing importance of migration, as well as the challenges and opportunities that it presents to participating States,

Further recognizing that migration is becoming a more diverse and complex phenomenon, which needs to be addressed in a comprehensive manner and therefore requires a cross-dimensional approach at the national, regional and international levels,

Recognizing that all States should adopt effective national frameworks in order to manage migration,

Underlining that migration is inherently a transnational issue requiring co-operation between States,

Acknowledging that migration constitutes an important economic, social and human factor for host countries as well as for countries of origin,

Acknowledging also that successful integration policies that include respect for cultural and religious diversity and promotion and protection of human rights and fundamental freedoms are a factor in promoting stability and cohesion within our societies,

(...)

Considering that the OSCE, within its comprehensive approach to security, could contribute, *inter alia*, by:

- Working in synergy and developing a stronger partnership with international bodies having a specific focus on migration,
- Facilitating dialogue and co-operation between participating States, including countries of origin, transit and destination in the OSCE area, as well as the OSCE Partners for Cooperation and Mediterranean Partners for Co-operation,
- Assisting the participating States, upon their request, to develop effective migration policies and to implement their relevant OSCE commitments,
- Inviting participating States to consider becoming parties to relevant international Instruments.

Athens 2009 (Decisions: Decision No. 5/09 on Migration Management)

The Ministerial Council,

Acknowledging the increasing importance of and the benefits stemming from effective migration management for the socio-economic development, social cohesion, security and stability in all countries including those of origin, transit and destination, and fully recognizing the human rights of migrants and their family members,

Underscoring the importance of mainstreaming migration policies into economic, social, environmental, development and security strategies and addressing migration management through co-operative, comprehensive and cross-dimensional approaches,

Underlining the need to facilitate legal migration and fight illegal migration,

Bearing in mind the different approaches to migration issues by the OSCE participating States, and drawing on their experiences and best practices,

Stressing the need to deepen dialogue and co-operation at all levels within and between all States, as well as with all relevant stakeholders, including social partners, business community, civil society and academia, to effectively address the opportunities and challenges related to comprehensive migration management,

Confirming that co-operation, dialogue and exchange of good practices and information on migration management issues remain an important component of the OSCE's comprehensive concept of security, supported as appropriate and within the respective mandates, capacities

and resources in all three dimensions,

1. Encourages the participating States to continue to work on migration management by:

- Paying particular attention to addressing the root causes of migration;
- Ensuring that their national migration practices comply with their respective international obligations and OSCE commitments;
- Further elaborating and enhancing implementation of comprehensive and effective national migration policies and action plans as appropriate;
- Improving the collection of comparable data on migration, in order to facilitate dialogue and exchange of best practices at the OSCE level;

(...)

- Respecting the human rights of migrants and increasing efforts to combat discrimination, intolerance and xenophobia towards migrants and their families;

(...)

5. Tasks the Permanent Council, its informal subsidiary bodies and the OSCE executive structures, in accordance with their respective mandates across all dimensions, within the Organization's comprehensive concept of security and within existing resources to *inter alia*:

- Provide a broad regional platform for dialogue on migration and security issues, both among OSCE participating States and between participating States and Partners for Cooperation, with the involvement of other relevant stakeholders in full conformity with the OSCE Rules of Procedure;

- Continue working on gender aspects of migration;

- Assist participating States, upon their request, to improve migration legislation and to elaborate and implement effective national policy frameworks, by providing advice and training, in co-operation with relevant international and regional organizations;

(...)

- Continue to assist the participating States, upon their request, to promote effective migration management, including exchange of best practices, and to facilitate legal migration and fight illegal migration, while paying particular attention to bilateral and multilateral co-operation in this field.

Hamburg 2016 (Decisions: Decision No. 3/16 on OSCE's role in the governance of large movements of migrants and refugees)

The Ministerial Council,

Recognizing that the benefits and opportunities of safe, orderly and regular migration are substantial and often underestimated, whilst noting that irregular migration in large movements often presents complex challenges, and

recognizing the substantial economic and social contribution that migrants and refugees can make for inclusive growth and sustainable development,

Recognizing the leading role of the United Nations, Commending efforts made since 2015 by the Serbian and German OSCE Chairmanships to address issues related to the governance of these movements more effectively in the OSCE, Acknowledging the many specific activities linked to migration and refugees already undertaken by OSCE executive structures, within existing mandates, as well as by participating States, based on existing OSCE commitments, relevant United Nations documents and national policies,

Building on in-depth discussions conducted at the OSCE, especially during the hearings of the Informal Working Group Focusing on the Issue of Migration and Refugee Flows in spring 2016 and during a special meeting of the OSCE Permanent Council held on 20 July 2016,

1. Acknowledges the work of the Informal Working Group Focusing on the Issue of Migration and Refugee Flows and the output discussed at the special meeting of the OSCE Permanent Council of 20 July 2016;
2. Encourages the OSCE executive structures, within existing mandates and available resources, to continue their work on the issue of migration, including by reinforcing activities leading to the exchange of best practices and enhancing dialogue and co-operation with Partners for Co-operation, in a manner that complements the activities undertaken by other relevant international organizations and agencies;
3. Encourages participating States also to use the OSCE platform, including appropriate OSCE working bodies, to continue addressing migration-related issues where the OSCE has developed its expertise, and improve dialogue on migration-related matters with regard to developing possible effective measures and common approaches to address them.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).