



Office for Democratic Institutions and Human Rights

Border Police Monitoring in the OSCE Region

A discussion of the need and basis for human rights monitoring of border police practices



Warsaw

5 May 2021

Acknowledgements

The study “Border Police Monitoring in the OSCE Region. A discussion of the need and basis for human rights monitoring of border police practices” has been undertaken for ODIHR by Mr. Todor Gardos and the views and opinions expressed do not necessarily represent those of ODIHR.

Table of Contents

1. Introduction	4
1.1. Rationale for research on border police monitoring	4
1.2. Background to the report, the OSCE and ODIHR.....	5
1.3. The specific context of border policing.....	6
1.4. Border police monitoring: recent developments in the OSCE region.....	7
2. Human rights at international borders	10
2.1. Non-refoulement	11
2.2. Right to liberty of migrants at borders	12
2.3. Operational safeguards.....	13
3. The role of state and non-state actors	15
3.1. The role of the state	15
3.2. The role of non-state actors	16
4. Monitoring guidance and transferable knowledge	20
4.1. Common functions and objectives of monitoring	20
4.2. Detention monitoring.....	21
4.3. Forced return monitoring	24
4.4. Access to information and interviewing migrants and border authorities	25
4.5. Ethics and communication	26
4.6. Monitoring as a continuous and systematic activity.....	28
4.7. Further guidance.....	28
5. Examples of current practices in border police monitoring.....	31
5.1. Scope of human rights monitoring at borders	32
5.2. Co-operation between authorities and other actors	36
5.3. Barriers to effective independent monitoring.....	41
5.4. Summary of findings	45
6. Recommendations	47
6.1. Ensure political support for monitoring and protection of human rights at borders.....	47
6.2. Ensure an enabling environment for monitoring.....	47
6.3. Ensure the functional independence and efficiency of monitors	48
6.4. Promote co-operation and capacity building for border police monitoring internationally	49
7. Conclusion.....	50
Annex I – Standards on efficient and independent monitoring, and guidance drawn from monitoring places of detention	52
Bibliography.....	55

1. Introduction

Across the OSCE region, border police and other law enforcement agencies are deployed to land and sea borders, often as part of bilateral or international co-operation. States have uncontested responsibility to protect and manage national borders, but this can collide with the rights of individuals who cross borders for various reasons, including as international migrants or while seeking international protection. Border management needs to take into account and be consistent with international human rights obligations.

Any law enforcement action, including at land and sea borders must take into account individuals' rights to both substantive and procedural safeguards enshrined in international law and national legislation.

Such actions must be individualized, and provide effective remedies against arbitrariness, including summary detention at or near borders, collective expulsions, and *refoulement*, that is, the summary return of individuals to states without assessment of the individual circumstances and risks each person would face upon their return.

1.1. Rationale for research on border police monitoring

Border policing is most often carried out in remote areas outside of the public's view, making institutional oversight and public scrutiny difficult. As with any institutional service provision affecting human rights, rigorous internal mechanisms need to be in place and implemented to ensure rules of procedure and codes of conduct are adhered to. Equally, there is a strong case for independent border police monitoring as a supplementary oversight activity. When independent, thorough and systematic, monitoring can increase transparency and the accountability of law enforcement, as well as the overall quality of interventions, while also enabling individuals to access rights in practice.

There are potentially conflicting interests between state agencies and international migrants¹ who set out to cross borders regularly and irregularly. However law enforcement should always ensure that the human rights of all involved are protected during the course of their operations. In recent years, various breaches of international and national obligations have been documented by non-governmental organizations, international monitoring bodies, national human rights institutions, journalists and other observers in the OSCE region.

Oversight over police practices at borders to determine their compliance with international and national law is an essential element of rights-compliant migration policy and border management. Unfortunately, at present, there is both a lack of systematized knowledge on the range of issues relevant to this problem, and a lack of coherent methodological approaches to

¹ The term "migrant" is used in this report as a neutral term to refer to any person who is outside of a state of which they are a citizen, or is their place of habitual residence.

monitoring border police operations with a view to ensuring greater protection of the rights of international migrants, as well as increased transparency and accountability of national agencies and institutions. There are however, existing monitoring arrangements in place across the OSCE region with respect to detention, including of non-nationals, and forced return, which can provide useful reference points as to how an effective and independent border police monitoring could be set up.

This research consolidates available information and showcases selected current practices on border police monitoring in order to raise awareness and share information among the different stakeholders, both governmental and non-governmental, across the OSCE region. Its main aim is to enhance awareness of this type of monitoring activity, explore opportunities for increased monitoring and identify transferable good practices, with a view to increasing systematic independent border police monitoring, and thereby contributing to the advancement of rights-respecting border management practices across the OSCE region.

1.2. Background to the report, the OSCE and ODIHR

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) provides support, assistance and expertise to OSCE participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. Among other areas of work, ODIHR provides expertise, delivers technical assistance and develops policies and good practices on the protection and promotion of the human rights of migrants and on the integration of migrants across the OSCE region; ODIHR commissioned this report as part of these activities on migration.

The OSCE's Border Security and Management Concept (BSMC) adopted by the Ministerial Council in 2005 in Ljubljana provides a framework for cross-border co-operation and the numerous commitments of OSCE participating States relevant to border management and monitoring. It is regarded as a major milestone for the Organization, containing provisions for contributions across the OSCE's three dimensions of security: the politico-military, the economic and environmental, and the human dimension.²

The BSMC defines, as one of the main objectives of co-operation, the sharing of good practices with the view to improve compliance with border-related security and management standards.³ Four of the eight aims of the concept relate, at least partially, to the protection and promotion of human rights at borders: the promotion of free and secure movement of persons; the prevention and repression of transnational organised crime, including irregular migration, corruption, smuggling and trafficking in human beings; the promotion of high standards in border services and competent national structures; and, the promotion of dignified treatment of

² Herbert Salber, Alice Ackermann, "The OSCE's Comprehensive Approach to Border Security and Management", in IFSH (ed.), *OSCE Yearbook 2009*, Baden-Baden 2010, pp. 289-301.

³ OSCE Ministerial Council, "Border Security and Management Concept: Framework for Co-operation by the OSCE Participating States", Chapter 2, para. 3, Ljubljana, 6 December 2005.

all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights, refugee and humanitarian law, and relevant OSCE commitments.⁴

1.3. The specific context of border policing

At land borders, physical barriers and advanced technological equipment are used to detect, prevent and stop irregular border crossings, and in some cases to return irregular migrants, whether they travel individually or in groups. At sea, particularly along major migration routes such as those in the Mediterranean Sea, air and sea patrols are deployed to prevent criminal activity, including smuggling and human trafficking using vessels, to implement off-shore border surveillance, and in some cases, to take part in search and rescue of vessels in distress at sea.

Border policing generally takes place in areas where the movement of civilians is restricted, either at official border posts, airports and maritime ports, or along border lines (although border management-related policing deep inside national territory, as well as remote surveillance, is also practised). Therefore, movements that fall outside of the scope of ordinary cross-border traffic will usually provoke an immediate counter-reaction from the agents of the state.

Any use of force in the context of border security and migration management must be exceptional, necessary and proportionate to a specific threat. Agents must seek to minimize damage and injury, and respect and preserve human life.⁵ Regulations and rules on the use of force and firearms by law enforcement, as well as systems for the reporting of incidents resulting in injury and death should be in place.⁶

Policing actions affecting irregular migrants at borders⁷ can include interception, apprehension, screening, identification, referral, capture, pushbacks, frisking and body searches, as well as the use of physical restraint. During border police operations, migrants are at times subject to arrest, interrogation, interviewing, escort, transfer, return, removal, detention and expulsion. The imbalance of power between law enforcement agents and civilians, at land borders or at sea, puts the individual in a vulnerable position, particularly if there are additional factors that make communication and following instructions difficult, such as language and cultural barriers.

For border policing to be lawful, accountable, non-arbitrary and non-discriminatory, it needs to be implemented in full respect for human rights, refugee and humanitarian law, and in line with procedural safeguards prescribed in international and national law. Effective remedies need to

⁴ *Ibid.*, Chapter 2, paras. 4.1, 4.3, 4.4, 4.5.

⁵ See OSCE, [Guidebook on Democratic Policing by the Senior Police Adviser to the OSCE Secretary General](#), Vienna, May 2008, Articles 67-74.

⁶ See United Nations, [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Articles 1, 5, and 6.

⁷ This research focuses on border policing in the context of migration management, and thus is concerned mainly with its effects on non-nationals, without prejudice to responsibilities of participating States towards their nationals.

be made available for any alleged violations. Just as detention or forced returns, where monitoring is already an established practice in many states, border police operations ought to be subject to examination by independent monitors with the view to preventing human rights violations and to assessing practices and identifying systemic deficiencies that may lead to such violations. Due to the remoteness of locations where border police operations are typically carried out, scrutinising practices is extremely difficult without the consent and co-operation of law enforcement and without access and permission being granted to observers.

1.4. Border police monitoring: recent developments in the OSCE region

The outbreak of the COVID-19 pandemic in early 2020 has resulted in widespread, mostly temporary border closures in the OSCE region, including between participating States that have abolished regular border control at their borders within the Schengen Area. In some European Union (EU) Member States, the right to move and reside freely has been temporarily restricted by national governments which re-instituted limitations on entry and transit for non-residents, including for nationals of EU states, as part of measures to control the spread of the coronavirus through limiting international travel.

In some states, administrative procedures concerning asylum and migration management have been suspended or significantly altered: in some cases, the registration and evaluation of new asylum applications have been halted or delayed; elsewhere, access to territory was denied for asylum-seekers and other migrants, especially if they crossed borders irregularly.⁸

Border closures across the OSCE region, and particularly at the EU's external borders have also led to overcrowding in camps, shelters and reception centres for migrants, including asylum-seekers, and leaving those accommodated in such institutions at higher risk of infection due to overcrowding and unsanitary conditions.

Travel and health restrictions have meant the implementation of many return orders have been suspended, leading in some states to increased use of immigration detention. Equally, in order to prevent further spread of the virus and maintain the legality of immigration detention, some states opted for the release of detainees.⁹ ODIHR has joined international and civil society organizations in calling for a moratorium on the use of administrative detention in immigration proceedings and for the immediate release of all those held in pre-removal detention, where deportations have been halted.¹⁰

These special measures taken in reaction to the public health emergency fall within the broader context of the securitization of migration. Across the OSCE region and at its limits, national

⁸ See European Council on Refugees and Exiles (ECRE), [COVID-19 measures related to asylum and migration across Europe](#), 28 May 2020.

⁹ ODIHR, [OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic](#), 2020, p. 150.

¹⁰ ODIHR, [Overcrowded shelters put migrants at unacceptable risk amidst pandemic, OSCE human rights head says](#), Warsaw, 4 May 2020.

and supranational legislation to control migration and law enforcement operations to secure borders are in place and are applied simultaneously.

The execution of these operations by police, border guards, military and other security personnel are the uncontested right and responsibility of sovereign states. They are often carried out, to various degrees, in co-operation, in which case they are also governed by bilateral and multilateral co-operation agreements and memoranda of understanding.

At the external frontiers of the EU, operations are further reinforced by the European Border and Coast Guard Agency (Frontex), whose functioning is regulated at the level of the EU,¹¹ and involves both nationally contributed border guards and equipment, as well as a new standing corps recruited and trained by the agency itself.¹² Other multilateral agreements with a border management co-operation component include the Police Co-operation Convention for Southeast Europe (11 states members) and the Baltic Sea Region Border Control Co-operation (10 states members).

In its recently released *New Pact on Migration and Asylum*, the European Commission, the EU's executive arm, seeks to increase monitoring of migration management at the external borders of the EU by proposing that EU Member States integrate independent monitoring mechanisms into their screening processes to ensure that the rights of third country nationals are respected.¹³ A simultaneous proposal envisages increased use of fast-tracked asylum and return border procedures for certain categories of asylum-seekers.¹⁴ Independent monitoring is increasingly needed to guarantee the efficiency and fairness of such border procedures.

Frontex has recently taken steps to introduce regular monitoring of its own activities with the aim of enhancing transparency and promoting fundamental rights during its operations. By signing an agreement with the EU Fundamental Rights Agency (FRA) in June 2020, it seeks to establish a pool of 40 trained fundamental rights monitors, who would be deployed under supervision of Frontex's Fundamental Rights Officer to ensure operational activities are in line with fundamental rights obligations in the EU and to contribute to the training of the agency's personnel.¹⁵ At the same time, a group of ombuds institutions have launched the 'Nafplion Initiative', a co-operation of national actors seeking to supplement Frontex's internal mechanisms with external monitors committed by those institutions, with the view to guarantee

¹¹ See *Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019*.

¹² See Frontex, [Frontex welcomes new standing corps recruits](#), 30 September 2020.

¹³ European Commission, [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations \(EC\) No 767/2008, \(EU\) 2017/2226, \(EU\) 2018/1240 and \(EU\) 2019/817](#), 23 September 2020.

¹⁴ European Commission, [Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU](#), 23 September 2020.

¹⁵ Frontex, [Frontex and FRA agree to establish fundamental rights monitors](#), 6 June 2020.

“transparency, accountability and uniform, highest possible standards for the treatment of individuals during returns”.¹⁶

¹⁶ The Greek Ombudsman, *Return of Third Country Nationals. Special Report*, 2019, pp. 27-28.

2. Human rights at international borders

A set of human rights standards come into play at international borders in the context of encounters between border police and international migrants. Underpinning specific rights, the UN Office of the High Commissioner for Human Rights (OHCHR) has recommended basic principles for states to consider during border management in order to: 1) put human rights at the centre of all border operations; 2) protect migrants from any form of discrimination at borders; and, 3) provide assistance and protection from harm, including by ensuring access to justice.¹⁷

Specifically, states can never derogate from the right to life,¹⁸ the prohibition of torture, cruel, inhuman and degrading treatment,¹⁹ the right to be recognized everywhere as a person before the law,²⁰ and the right to freedom of thought, conscience and religion.²¹ The UN Human Rights Committee (HRC) has also identified certain peremptory norms from which states can never derogate and which are relevant in this context: the right to a fair trial, including the presumption of innocence,²² the prohibition of arbitrary deprivation of liberty,²³ and the prohibition of collective punishment.²⁴ OSCE participating States have made successive commitments to reaffirm the importance of these rights and of state institutions taking action to protect them (more detail on OSCE commitments particularly relevant to human rights at international borders is provided in the text box below).

The following sub-sections outline key aspects of international human rights law which must be respected by border police and services in their dealings with travellers and people on the move, including migrants, refugees and asylum-seekers.

OSCE commitments relating to human rights at international borders

OSCE participating States have committed to the protection of the human rights of migrants in a series of commitments relating to the human dimension of security contained in a growing set of documents.²⁵ These commitments, developed jointly and adopted unanimously by all participating States, establish clear standards for the OSCE region. In the Helsinki Final Act (1975), participating States expressed concern for the protection of the rights of migrant workers and refugee populations. This concern has been reflected by participating States in subsequent commitments to ensuring the human rights and fundamental freedoms of everyone within their

¹⁷ UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, October 2014, p. iv.

¹⁸ [International Covenant on Civil and Political Rights \(ICCPR\) adopted by UN General Assembly resolution 2200A \(XXI\) of 16 December 1966](#), Article 6.

¹⁹ *Ibid.*, Article 7.

²⁰ *Ibid.*, Article 16.

²¹ *Ibid.*, Article 18.

²² *Ibid.*, Article 14.

²³ *Ibid.*, Article 9.1.

²⁴ UN Human Rights Committee (HRC), [CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency](#), 31 August 2001.

²⁵ See ODIHR, [OSCE Human Dimension Commitments, Volume 1](#), Thematic Compilation, Warsaw, 2012, pp. 181-191; [OSCE Commitments relating to Migration and Integration](#), Warsaw, 2005.

territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Concluding Document of Vienna – The Third Follow-up Meeting, 1989). Participating States have repeatedly stressed that the protection of human rights and fundamental freedoms extends to migrant workers, refugees and asylum-seekers, and have agreed to take steps to combat discrimination, intolerance and xenophobia (OSCE Ministerial Council in Maastricht, Decision No. 4/03, Tolerance and Non-discrimination, December 2003; OSCE Ministerial Council in Sofia, Decision No. 12/04, Tolerance and Non-discrimination, December 2004).

To implement those commitments, participating States have integrated human rights and fundamental freedoms in the OSCE Border Security and Management Concept and committed to promote the sharing of good practices, including on ways to ensure the dignified treatment of all individuals wanting to cross borders (see Section 1.2). The OSCE Ministerial Council has also encouraged participating States to include such efforts into their work on migration management (Athens 2009 Ministerial Council Decision No. 5/09 Migration Management).

In the Copenhagen Document (1990), participating States have declared “elements of justice” essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings. They have committed to provide individuals an effective means of redress against administrative decisions in order to guarantee respect for fundamental rights and ensure legal integrity. They have also recognized the right to seek and receive assistance or assist others in defending human rights and fundamental freedoms, and the need for protection of human rights defenders (Budapest Summit Declaration “Towards a Genuine Partnership in a New Era”, 1994).

Participating States have also committed to advance the prevention of torture through supporting the efforts of national bodies or mechanisms, and to support the efforts of civil society organizations working to prevent and combat torture and ill-treatment (Tirana 2020 Ministerial Council Decision No. 7/20 – Prevention And Eradication Of Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment).

OSCE commitments require that all measures taken at borders, including during a health emergency such as the COVID-19 pandemic, are applied without distinction of any kind.²⁶

2.1. Non-refoulement

The principle of *non-refoulement*, that is, the prohibition of returning a person to a place of danger, is the cornerstone of international refugee and human rights law. It is a core component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Under Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT), states are prohibited from returning or extraditing any person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Article 33 of the 1951 Refugee Convention prohibits the return of refugees and asylum applicants to countries where they would risk persecution. The principle of *non-refoulement* prohibits direct returns, as well as indirect forcible returns (also sometimes referred to as ‘chain *refoulement*’) which would have the same effect. The prohibition of *refoulement* is absolute.²⁷

²⁶ ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, Warsaw, 2020, pp. 147-152.

²⁷ See European Asylum Support Office (EASO), *Asylum procedures and the principle of non-refoulement – Judicial Analysis*, 2018, p. 28.

Refoulement is also prohibited under the European Convention on Human Rights (ECHR), which prohibits Council of Europe (CoE) states from sending back people to countries where their right to life (Article 2 ECHR) or the prohibition of torture, inhuman or degrading treatment and punishment (Article 3 ECHR) would be breached. The case-law of the European Court of Human Rights (ECtHR) has confirmed that where a person claims that removal would expose him or her to such breaches, the right to effective remedy requires that the removal is suspended (automatic suspensive effect).²⁸

At the level of the European Union, the Treaty on the Functioning of the EU, the Charter of Fundamental Rights of the EU (EU Charter), and the Schengen Borders Code (Regulation (EU) 2016/399) prohibit *refoulement* and collective expulsions. The EU Charter explicitly guarantees the right to asylum.²⁹ The prohibition of *refoulement* and collective expulsions applies both to conduct at land and sea borders.

2.2. Right to liberty of migrants at borders

The right to liberty is fundamental and extends to all persons regardless of citizenship, nationality or immigration status. Arbitrary detention can never be justified. For the detention of migrants in an irregular situation to be lawful, it must fulfil stringent criteria, and be subject to regular review. In 2018, the UN Working Group on Arbitrary Detention (WGAD) issued a consolidated reference on international law regarding migrant detention in its *Revised deliberation No. 5*.³⁰

International law requires that states do not criminalize irregular entry and stay, and do not treat migrants as criminals for crossing borders.³¹ Any form of administrative detention must be applied as a measure of last resort, for the shortest period of time, and be justified as reasonable, necessary and proportionate to a legitimate purpose (e.g. documentation, identification). Detention must be ordered individually, by a judge or other judicial authority, and reviewed periodically; anyone detained should be guaranteed access to a court of law. The UNHCR Executive Committee has expressed that in relation to refugees and asylum-seekers, detention should normally be avoided in view of the hardship which it involves.³²

Children should not be arrested or detained solely on the grounds of their migration status; the growing international consensus on this principle was underlined by the United Nations General

²⁸ ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011.

²⁹ See FRA – European Union Agency for Fundamental Rights and Council of Europe, *Fundamental rights of refugees, asylum applicants and migrants at the European borders*, March 2020, p. 5-6.

³⁰ See UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018.

³¹ *Ibid.*, para. 10.

³² See Executive Committee of the High Commissioner's Programme, *Detention of Refugees and Asylum-Seekers No. 44 (XXXVII) - 1986, 13 October 1986*, para. (b). The Executive Committee has held that "[i]f necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order".

Assembly in a 2014 resolution that confirmed that deprivation of liberty of migrant children should be a measure of last resort, under conditions that respect the human rights of each child and in a manner that takes into account the best interests of the child.³³ Detaining children on the grounds of their parents' migration status will always violate the principle of the best interests of the child.³⁴

Migrants deprived of their liberty have the right to be informed, in a language they understand, of the circumstances of detention, and the possibility to challenge it, including by accessing legal aid and representation.³⁵ International organizations, national human rights institutions, and non-governmental organizations should be allowed access to migrant detention facilities.³⁶

2.3. Operational safeguards

The OHCHR has recommended that border police authorities be trained to identify and provide assistance to migrants who may be at particular risk at borders, including children, women, victims of torture, violence and gender-based violence, lesbian, gay, bisexual and transgender, and/or intersex (LGBTI) migrants, and migrants with disabilities. At borders or near places of rescue or interception, states are required to provide access to individual health and medical care, to adequate food and water, and to basic items such as blankets, clothing and sanitary items, as well as adequate space and conditions in temporary reception facilities or transit zones. Referrals for migrants who require further medical attention need to be made available. Every person in need of international protection should be provided with information about the right to seek asylum and relevant organizations that provide assistance.³⁷

States should establish and implement screening and referral processes in such a way that each person's situation and reason for entry can be determined individually, and that vulnerabilities and risks can be identified and referred. Data collection and health screening must comply with the right to privacy and be based on individual consent, be proportionate and necessary, and be applied without discrimination.

Border police authorities must be adequately trained and provided with guidelines and procedures to conduct interviews in a professional and non-threatening way, respecting the dignity of migrants, and with the help of impartial and competent interpreters when necessary. Border police authorities should be trained and sensitized to understand the risk of stereotypes and bias, and to respect the needs and vulnerabilities relating to the situation of migrant women

³³ UN GA, *Migrant children and adolescents*, Resolution adopted by the General Assembly on 18 December 2014, A/RES/69/187.

³⁴ UN WGAD, *op. cit.* para. 40.

³⁵ *Ibid.*, paras. 33-35.

³⁶ *Ibid.*, para. 47.

³⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guidelines 5 & 7.

and children, LGBTI migrants, and migrants with disabilities. Unaccompanied children should be identified and referred to child protection services without delay.³⁸

Resources

International Commission of Jurists, *Migration and International Human Rights Law, Practitioners Guide No. 6*, Updated Edition, Geneva, 2014.

International Detention Coalition, *There are alternatives, A handbook for preventing unnecessary immigration detention*, Revised Edition, 2015.

UN Secretary General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, 2014.

UN OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014.

UN OHCHR, *In Search of Dignity, Report on the human rights of migrants at Europe's borders*, 2017.

ODIHR, *OSCE Commitments relating to Migration and Integration*, 2005.

ODIHR, *OSCE Human Dimension Commitments*, Volume 1, Thematic Compilation, 2012.

ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, 2020.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Factsheet on immigration detention*, 2017.

European Asylum Support Office (EASO), *Asylum procedures and the principle of non-refoulement*, 2018.

EASO, *Border Procedures for Asylum Applications in EU+ Countries*, 2020.

European Union Agency for Fundamental Rights (FRA), *Fundamental rights at Europe's southern sea borders*, 2013.

FRA, *Fundamental rights at land borders: findings from selected European Union border crossing points*, 2014.

FRA, *Migration: Fundamental rights issues at land borders*, 2020.

FRA and ECtHR, *Handbook on European law relating to asylum, borders and immigration*, 2014.

FRA, *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, 2016.

FRA and CoE, *Fundamental rights of refugees, asylum applicants and migrants at the European borders*, 2020.

³⁸ *Ibid.*, Guideline 6.

3. The role of state and non-state actors

Beyond law enforcement agencies and their operational arrangements, a human-rights compliant border governance regime requires the involvement of a wide range of state and non-state actors: lawmakers and parliamentary commissions, government ministries and executives, police oversight bodies, international monitoring bodies and organizations, national human rights and ombuds institutions, and civil society.

3.1. The role of the state

Migration and border management are key areas of internal and foreign policy, and therefore subject to political negotiations across the OSCE region. Parliaments, governments, and supranational institutions at times have differing interests and priorities, and can disagree over arrangements on managing borders, as well as on the reception of migrants, including asylum-seekers.

Nonetheless, individual states have overarching responsibility to ensure that the implementation of laws and policies takes place in a transparent and accountable manner, and that no state action leads to human rights violations. Where such violations occur, states have responsibility to provide access to justice and to effective remedies, including through taking measures to prevent further violations.

Non-discrimination and equality before the law are core human rights enshrined in the Universal Declaration of Human Rights; states need to actively protect, promote and fulfil these. In the context of anti-migrant political rhetoric and contemporary forms of xenophobia present in many countries, which constitute a threat to the rule of law and to the functioning of democratic societies, states must ensure that adequate safeguards are put in place for protecting the rights of all people, regardless of citizenship, nationality or migration status.

These obligations arise when people come under the jurisdiction of a state, including outside of the state's territory where it exercises effective control or authority over an area, place, individual or transaction,³⁹ and extends to all agents of the state, including private actors acting on its behalf. Political leadership and government executives therefore have responsibility to enact and implement legislation, policies and practices to enable the enjoyment of these rights, and to ensure that remedies are available in law and in practice to migrants who become victims of human rights violations at borders.

³⁹ On the extraterritorial applicability of human rights obligations, see the *Interim Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/70/303, 7 August 2015, paras. 11-25.

International rules and standards for policing which affect migrants in particular

Law enforcement officials must know, respect and protect the rights of people crossing borders. In particular, they are required to comply with the following obligations:

- To take account of the particular vulnerability of people on the move, protecting them against crime and xenophobic violence;
- To give due consideration to their lack of legal knowledge and language skills;
- To treat them without discrimination;
- To treat them as victims and not as criminals, particularly where they have become victims of human trafficking;
- To ensure respect for their legal rights and for the due process of law in case of arrest and detention.

Source: International Committee of the Red Cross (ICRC), *International rules and standards for policing*, 2015.

3.2. The role of non-state actors

At borders, states often invite specified **international organizations** to contribute: the International Organization for Migration (IOM) to monitor border movements, profile migrants and humanitarian needs and organise assistance, and the UNHCR to assess protection needs for refugees and monitor practical and legal aspects of access to asylum. UNHCR's supervisory function is explicitly stipulated in the 1951 Convention related to the Status of Refugees⁴⁰ and provides the basis for a range of activities which UNHCR often undertakes with local implementing partners.⁴¹

International monitoring bodies and human rights expert bodies carry out monitoring on the basis of states' accession to international and regional human rights conventions and protocols, and often have guaranteed access to locations and procedures, including documentation relevant in the context of border and migration management. The Special Procedures of the UN Human Rights Council provide a mandate for international experts to report and advise on human rights from a thematic or country-specific perspective, and frequently see the organization of country visits, action on reported violations, and advocacy and technical co-operation with states.⁴² Special Rapporteurs also report on systemic human rights concerns affecting migrants, including the widespread detention of migrants, the

⁴⁰ Article 35 of the Convention provides that "Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees [...] and shall in particular facilitate its duty of supervising the application of the provisions" of the Convention. See also: Walter Kälin, "Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and beyond", *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003, Chapter 10.1.

⁴¹ See e.g. the programme set up to develop [tripartite monitoring co-operation agreements](#) between state authorities, UNHCR and local human rights organizations in Central Europe; [Tripartite Agreements | Tripartite agreements – UNHCR Central Europe](#).

⁴² See [Special Procedures of the Human Rights Council](#), undated.

xenophobic and discriminatory impacts of digital technologies, including at borders, and the extraterritorial application of the prohibition of torture and other ill-treatment.⁴³

In Council of Europe (CoE) member states, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has unlimited access to places of detention, to interview any person in private, and to communicate freely to obtain information.⁴⁴ As part of its mandate, the CPT regularly visits immigration detention facilities, and can also monitor migrant transfers and returns. The utmost majority of its reports are published and provide recommendations to CoE states to address shortcomings and prevent and address torture and ill-treatment.⁴⁵

Regional ombuds institutions and human rights commissioners also regularly initiate their own investigations into specific human rights concerns. International bodies, experts and organizations have an important role in transferring good practices and know-how to local organizations and monitors, and can empower local actors to develop relationships with state authorities and take part in long-term monitoring activities.

National Human Rights Institutions (NHRIs) are national institutions mandated with the protection of human rights which should comply with UN principles relating to the status of national institutions known as the *Paris Principles*. Their role is to promote and monitor the effective implementation of international human rights standards at the national level.⁴⁶ Most commonly, NHRIs are designated functions of existing ombuds institutions or human rights commissions; in other states, equality bodies or human rights institutes take on the role of an NHRI. Depending on national law and organizational setup, institutions can receive and investigate complaints, as well as launch *ex officio* investigations into suspected human rights violations.

The UN *Paris Principles* set out six main criteria that NHRIs are required to meet:

- Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- Autonomy from government;
- Independence guaranteed by statute or constitution;
- Pluralism;
- Adequate resources;
- Adequate powers of investigation.

Source: UN *Paris Principles*, 1993.

⁴³ See, in particular, recent reports of the Special Rapporteur on the human rights of migrants (A/75/183), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/75/590), and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/70/303).

⁴⁴ See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, [The CPT in brief](#), undated.

⁴⁵ See e.g. [Report on the 2017 ad hoc visit of the CPT to Hungary](#); and [Report on the 2020 ad hoc visit of the CPT to Greece](#).

⁴⁶ See [OHCHR and NHRIs information page](#), undated.

Many NHRIs have been engaged in human rights monitoring in the context of asylum and migration management. Their broad human rights mandate, as well as investigative powers guaranteed in law, have allowed them to monitor a wide range of issues and to make recommendations to governments and state authorities.⁴⁷

Detention monitoring in particular has strong methodological and legal foundations in most OSCE participating States. All OSCE participating States have ratified the UN Convention Against Torture (CAT), and most also its Optional Protocol (OPCAT),⁴⁸ which requires regular monitoring of places of deprivation of liberty through establishing **National Preventive Mechanisms** (NPMs).

Under the OPCAT, NPMs are mandated to monitor all places of deprivation of liberty and play a crucial role in ensuring the humane treatment of any person deprived of their liberty. The OPCAT also guarantees that the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is given unrestricted access to all places of deprivation of liberty, and to all relevant information on facilities and detainees. The SPT provides assistance and advice to States Parties.⁴⁹ In many OSCE participating States, civil society organizations are also involved in guaranteeing the welfare of people deprived of liberty.

Beyond mandated bodies and organizations, where gaps in information and transparency have emerged in recent years, border monitoring has been carried out on an *ad hoc* basis. Various actors, including **non-governmental organizations, humanitarian organizations, faith-based organizations, maritime search and rescue services, independent groups of volunteers and monitors, parliamentarians and journalists** have taken on monitoring. Their work has documented⁵⁰ and uncovered egregious human rights violations committed by state authorities and other agents acting on a state's behalf at borders against migrants, including asylum-seekers, and denials of access to territory and asylum, through widespread pushback policies and practices⁵¹ in breach of the principle of *non-refoulement*.⁵²

Researchers and monitors have also substantiated and verified numerous allegations of physical violence and abuse. For this work, they have sometimes faced repercussions, including

⁴⁷ See e.g. European Network of National Human Rights Institutions (ENNHRI), *Protecting human rights of migrants at the borders. Evidence and work of European National Human Rights Institutions*, 2019.

⁴⁸ Except, as of February 2021: Andorra, Belarus, Belgium, Canada, Holy See, Ireland, Latvia, Monaco, Russian Federation, San Marino, Slovakia, Tajikistan, Turkmenistan, United States, Uzbekistan.

⁴⁹ See OHCHR, [Subcommittee on Prevention of Torture – Introduction](#), undated.

⁵⁰ For a selection of recent reports, see responses to the *Call for inputs for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants*, 1 February 2021;; see also Border Violence Monitoring Network, [Special Report: COVID-19 and border violence along the Balkan Route](#), May 2020; [The Black Book of Pushbacks](#), December 2020; and Refugee Rights Europe & End Pushbacks Partnership, [Pushbacks and rights violations at Europe's borders. The state of play in 2020](#), November 2020.

⁵¹ The term “pushback” refers here to any measure taken by a state and its authorities in the context of border-related operations, including inside state territory and at land and sea borders, with the aim to force back a migrant person or group of people to a territory from where they attempted to cross or have crossed an international border. Pushbacks are carried out without individualized assessments of protection needs and due process guarantees against *refoulement*.

⁵² See Parliamentary Assembly of the Council of Europe, *Pushback policies and practice in Council of Europe member States*, Report by the Committee on Migration, Refugees and Displaced Persons, 2019.

criminalization and administrative restrictions on their activities, intimidation, harassment, and smear campaigns, including for humanitarian action and life-saving search and rescue at sea, as some states took steps to silence the groups or to block their operations.⁵³

Non-governmental organizations have continuously recommended the introduction of robust independent monitoring at borders, to prevent the occurrence of further violations. At the level of the EU, this need has been partially recognized by the European Commission.⁵⁴ Human rights organizations have called on the Commission and EU Member States to make sure any new mechanism is genuinely independent and effective.

Recommendations from human rights organizations on European monitoring standards⁵⁵

While developed for EU and EU-frontier contexts, these civil society-developed recommendations have value and wider applicability across the OSCE region.

Scope

Monitoring should apply to all alleged human rights violations by State authorities during border management and border control. Monitoring should not be limited to certain procedures and locations only; instead, it should be organized so that blind spots are avoided. Particularly crucial to the success of monitoring and to ensure remedies for victims of human rights violations, is enabling cross-border processes for victims who may find themselves outside of the territory of the State where the alleged violation has taken place.

Independence

The EU should set standards so that independent national authorities and civil society organizations are involved in monitoring, and that such work is supported through EU funding. A credible and effective monitoring mechanism should include NHRIs, ombuds institutions, and be enabled to take into account relevant information and submissions from international organizations, non-governmental organizations, journalists, and other civil society actors.

Accountability

An EU-wide monitoring scheme should specify how States should act upon to investigate allegations, end abuses, act transparently and provide access to justice for victims. The findings of monitoring bodies should be made available publicly, and periodic reports on practical actions taken to follow-up their recommendations should be issued.

Consequences

Any State government that fails to set up, or to co-operate with the border monitoring body, or ignores its findings, should be subject to sanctions, political and financial, at the EU level.

⁵³ See e.g. Amnesty International, *Punishing compassion – Solidarity on trial in Fortress Europe*, EUR01/1828/2020, London, 2020.

⁵⁴ See *supra* note 13.

⁵⁵ See ECRE *et al.*, [Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability](#), 10 November 2020.

4. Monitoring guidance and transferable knowledge

Guidance for generic human rights monitoring and established good practices in detention and forced return monitoring provide useful resources for the development of border monitoring methodologies. A range of actors have provided detailed and authoritative guidance on human rights monitoring, including: the OSCE, the UN Office of the High Commissioner for Human Rights, the UN High Commissioner for Refugees, the Council of Europe and the Agency for Fundamental Rights of the EU, as well as non-governmental expert organizations.⁵⁶

4.1. Common functions and objectives of monitoring

People crossing borders are in a vulnerable situation. For monitoring to be efficient and successful, it has to maintain various functions:

Preventive and corrective function

Border police monitoring can prevent human rights violations from occurring: by being present as observers during border police operations, monitors can effectively act as deterrents for any breaches or excesses. The presence of monitors can also prompt a change in policies and instructions higher up in the chain of command, and can contribute to stopping and addressing some systemic shortcomings (e.g. pushback practices and policies).

Protection and direct support function

The observation of border police operations has a direct and immediate effect on migrants who are subject to policing. Even in cases where monitors are not allowed to intervene within the parameters of a co-operation agreement, they can make a record and follow-up on any specific needs for assistance, vulnerability, or procedural concerns, and can help humanitarian and legal assistance reach those who need it.

Documentation and reporting function

As access to borders is usually restricted, border monitoring provides an opportunity to document border police practices, and to record evidence and information that may substantiate allegations of human rights concerns (and subsequent prosecution). Monitoring records and reports can also be key sources of information for the general public, as well as for researchers, journalists and organizations providing support to migrants. While some monitoring reports may need to be confidential, and adequate data protection protocols should be in place, key findings and recommendations ought to be available to the public.

⁵⁶ An extended list of background documents and reports from a wide range of organizations is provided in the Bibliography.

Advocacy and capacity-building function

Monitoring visits need to be followed by advocacy with the competent authorities. Monitoring reports should make attempts to synthesize findings and make actionable recommendations that are truly able to address shortcomings. By sharing their professional expertise with law enforcement agencies, monitors can also contribute to the capacity-building of staff, helping to ensure information on standards and good practices is spread across institutions and able to stimulate attitudinal change.

Objectives of monitoring

Border police monitoring should be concerned with observing all actions of law enforcement in the context of border governance and should avoid being auxiliary to border police operations. It has to have its own objectives depending on the specific context and the main issues it is concerned with, and monitors should strive to obtain necessary permissions and practical arrangements to move and perform their work independently from the police authorities.

At minimum, the objectives of a border monitoring team should be to record and assess the actions of authorities against basic human rights standards and to identify any practice that appears to be in breach of those standards. Monitoring without follow-up fails to fulfil its most important function, that is to prevent further violations from happening and normalising, and ultimately becoming systemic shortcomings. A monitoring team must therefore always present its findings and provide practical and reasonable recommendations to the authorities whose actions it has assessed.

Monitoring should not be seen as a form of internal inspection, which has a different objective, namely to assess whether rules and procedures in operational structures of law enforcement bodies have been adhered to across all levels. Instead, monitors should be allowed to make references to obligations that may not be regulated at the level of the specific agency, but are obligations arising from international human rights standards and obligations and from national laws.

Additionally, monitors should be able to set a number of complementary objectives that can contribute to achieving a comprehensive assessment of the situation of migrants involved in cross-border movements and their needs, and to confer on this information with relevant humanitarian actors.

4.2. Detention monitoring

In order to gain a complete view on border police operations, monitors should be allowed access to places of deprivation of liberty where foreign nationals are detained, at border entry ports or transit zones, and when administrative detention is practised in relation to irregular border crossing. In some states, deprivation of liberty of migrants at borders takes place without due process, outside of the scope of immigration legislation, or outside official places of deprivation

of liberty. Monitors should have access to all information and documentation related to detention.

Transparency regarding detention practices is key to prevent arbitrary and abusive use of detention. The presence of monitors in the detention system can contribute to better adherence to rules and help to ensure that detention is a lawful, necessary and proportionate measure, that its necessity is temporarily revised, and that the conditions in which it takes place meet standards of adequacy and decency. Ultimately, regular monitoring of administrative detention in relation to border governance and migration management can lead to more frequent use of alternative measures and have a direct positive effect on the well-being of migrants.

Detention of migrants at borders is applied in several participating States in the OSCE region and specific guidance on visiting detention centres in a border context should be considered. While adequate living conditions and basic medical and professional care are crucial and should be provided without delay in detention, monitoring should extend beyond material conditions and the availability of services. Monitoring conditions of detention encompasses all aspects of the lives of people deprived of liberty and access to all areas where detainees are held: these should be considered when such visits are carried out (see Annex 1). Monitors should be allowed to speak privately and confidentially with detained migrants, subject only to their informed consent.

Across the OSCE region, various standards and practices are in place with regards to the detention of migrants apprehended in an irregular situation, mainly in the vicinity of borders and in transit zones. A common concern to bear in mind is that deprivation of liberty for administrative reasons, such as on the grounds of immigration status or for entering the territory of a participating State irregularly, has a profound effect on the individual. Where detention is arbitrary, ordered summarily and without due process, is disproportionate in length or takes place in sub-standard conditions, its detrimental effects on the individual are compounded. Monitors have to ensure that they are able to document in detail the circumstances of detainees, and follow-up with detailed recommendations, including with proposed alternatives to detention for authorities to consider.⁵⁷

Integrating the issue of sexual and gender-based violence in monitoring

A 2021 ODIHR guidance note provides insights and tools to monitoring teams of NPMs and other oversight mechanisms to support them in incorporating the specific concern of sexual and gender-based violence (SGBV) into planning, research, delivery and follow-up of monitoring activities.⁵⁸

Every person deprived of their liberty is at risk of sexual and gender-based violence, which remains a persistent problem in places of detention, as well as during arrest, interrogation and transfer.⁵⁹ Among others, migrants in

⁵⁷ See International Detention Coalition, *There are alternatives – A handbook for preventing unnecessary immigration detention (revised edition)*, 2015.

⁵⁸ ODIHR, *Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring, A Guidance Note for Oversight Mechanisms*, January 2021, <https://www.osce.org/monitoring-SGBV-in-detention>.

⁵⁹ *Ibid.*, p. 37.

detention, particularly people in a situation of vulnerability, including migrant women and girls, LGBTI migrants, unaccompanied minors and migrants with physical and mental health conditions, are at increased risk of SGBV.⁶⁰

The guidance note presents a suggested methodology on how to best address SGBV-related concerns in practice, without further endangering survivors and those at risk, including by providing interview techniques and examples of do's and don'ts during interviewing.⁶¹

It also proposes key considerations for monitors to ensure: that they are empowered to follow up on incidents of abuse that are brought to their attention, bearing in mind the primacy of the principle to 'do no harm' to victims; that they report on their findings in a gender-responsive manner; and ultimately, that they provide recommendations to authorities to address and prevent the occurrence of SGBV.⁶²

Monitors should have functional independence in carrying out their work, and not be subjected to threats of repercussions or sanctions against them for recording problematic practices. The protections that detention monitors enjoy must extend to those they come into contact with during their work: migrants, members of law enforcement, medical personnel, humanitarian and social workers and others. Their notes and records should be kept confidential, and those communicating with monitors should not face any formal or informal reprisals, discriminatory treatment or be subject to threats for doing so.

The UN Office of the High Commissioner for Human Rights, UNHCR, the Parliamentary Assembly of the Council of Europe (PACE) and the Association for the Prevention of Torture (APT) have provided guidance for monitoring places of detention which has relevance and value for monitors assessing the detention of migrants. Drawing on its own experience, the CPT has developed criteria for new monitoring mechanisms with the aim of helping ensure such mechanisms can function effectively and independently in a border context. A summary of key guidance on detention monitoring is provided in Annex I.

Immigration detention and access to asylum during COVID-19

States across the OSCE region have taken different measures since the outbreak of the COVID-19 pandemic in relation to immigration detention. Some participating States have reduced or suspended administrative detention, while others have introduced special measures to limit transmission of the disease in immigration detention centres. The World Health Organization and UNHCR have recommended the use of alternative accommodation whenever possible.⁶³ At the level of the European Union, the European Commission has asked Member States to continue asylum, return and resettlement-related procedures as much as possible while fully

⁶⁰ *Ibid.*, pp. 12-15.

⁶¹ *Ibid.*, Section 6., pp. 24-32.

⁶² *Ibid.*, Section 10., pp. 75-77.

⁶³ UNHCR Regional Bureau for Europe, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, 9 April 2020; WHO Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance*, 15 March 2020.

ensuring the protection of people's health and human rights, including through implementing required spatial and social distancing measures.⁶⁴

ODIHR has issued guidance to NPMs on monitoring places of detention, recommending tools and techniques to continue monitoring during the pandemic, including by using remote methods and technologies. In its 2020 report, ODIHR reminded participating States that without any prospect of removal and deportation, the administrative detention of migrants solely on the grounds of immigration status cannot be justified.⁶⁵

Refugees and migrants in transit and in reception centres have faced increased hardships since the outbreak of the COVID-19 pandemic, often lacking basic humanitarian support, access to protective equipment and medical care.⁶⁶ UNHCR has called on states to ensure access to territory during the pandemic as an essential precondition to guarantee the right to seek asylum. Where exceptional measures to curb the spread of the virus and to protect public health are necessary, states should still ensure that there is explicit exemption for asylum-seekers from entry bans and border closures, that quarantines are imposed in a preventive and time-bound way, and that medical screenings are made available without discrimination.⁶⁷

4.3. Forced return monitoring

There are no OSCE-wide standards or system for the monitoring of forced returns. This does however have strong foundations in EU law, as the EU Return Directive prescribes that EU Member States provide for an effective forced-return monitoring system.⁶⁸ Other OSCE participating States also carry out forced return monitoring on the basis of national provisions.⁶⁹ The EU Return Directive does not, however, specify how such a system should be constructed, and who should monitor forced returns. With its introduction in EU-level regulation, EU Member States now have the legal obligation to establish an *effective* monitoring arrangement: most countries have involved either National Human Rights Institutions, including those that are designated as National Preventive Mechanisms, or non-governmental organizations in this process; in some countries, monitoring is carried out internally by police directorates or prosecution services. The FRA regularly assesses forced return monitoring systems in the EU;⁷⁰ it has noted that not all EU Member States guaranteed permanent monitoring of returns, and

⁶⁴ European Commission, *COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*, Brussels, 16 April 2020.

⁶⁵ ODIHR, [Guidance – Monitoring Places of Detention through the COVID-19 Pandemic](#), p. 8. See also: CPT, [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(Covid-19\) pandemic](#), 20 March 2020.

⁶⁶ See e.g. Human Rights Watch, [Greece: Lead Poisoning Concerns in New Migrant Camp](#), 8 December 2020; International Organization for Migration, [Thousands of Migrants Forced to Sleep Rough after Closure, Destruction of Bosnia Camp](#), 23 December 2020.

⁶⁷ UNHCR Regional Bureau for Europe, *op. cit.*

⁶⁸ See *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 2008, Article 8(6).

⁶⁹ See e.g. information on the United Kingdom in section 5.1. of this report.

⁷⁰ See e.g. FRA, [Forced return monitoring systems - 2019 update](#), 27 June 2019; [Forced return monitoring systems – 2020 update](#), 3 July 2020.

that some of the systems could not be considered sufficiently independent to qualify as effective.⁷¹

A 2017 European Commission recommendation established a handbook for Member States, in which minimum requirements for the monitoring system are set out. These requirements aim to ensure that the forced return monitoring covers all activities during removal, from the preparation of departure until reception in the country of return, and that monitoring systems include the involvement of organizations different and independent from the authorities enforcing return. The recommendation also specifies that the existence of judicial remedies in individual cases, or of national systems of supervision of the efficiency of national return policies, should not be considered as monitoring systems, and additionally sets out some limitations on the scope and financing of monitoring.⁷² To develop a framework for monitoring in line with this recommendation, the EU has engaged civil society to work on standards and methodological guidance for forced return monitoring, and to build capacity at the national level by providing training.⁷³

With regards to monitoring return operations co-ordinated by Frontex, both an internal monitoring pool and an external group of monitors delegated by ombuds institutions under the ‘Nafplion Initiative’ are in the process of being set up, and have the potential to increase the transparency of those returns and to contribute to the existing knowledge base and best practices on forced return monitoring.⁷⁴

The experience of developing and implementing forced return monitoring systems in the EU can be useful when setting up border police monitoring, both in terms of the 2017 recommendations on minimum requirements noted above, and in providing an opportunity to map and adopt transferable models of co-operation between law enforcement and monitoring bodies, including civil society.

4.4. Access to information and interviewing migrants and border authorities

The border context can provide additional difficulties for monitors in establishing functioning and safe communication channels with migrants, compounded by social distancing requirements during the COVID-19 pandemic. Border operations are often time-sensitive and may not provide many opportunities for such dialogue. Monitors should strive to make themselves available to people wishing to speak with them in person or remotely.

Where possible, information sheets in the most common languages spoken by migrants, as well as in the local language, should be circulated in places where migrants are likely to be subject

⁷¹ *Ibid.*

⁷² European Commission, [*Commission Recommendation \(EU\) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks.*](#)

⁷³ See International Centre for Migration Policy Development (ICMPD), *Framework for a European Pool of Forced Return Monitors*, Vienna, 2015; *Guidelines and Monitoring Tools for Forced Return Monitoring*, Vienna, 2015; and *Training Manual, Forced Return Monitoring*, Vienna, 2015.

⁷⁴ See *supra* note 15 and 16.

to border policing and immigration procedures, namely border checkpoints, police stations and detention areas in proximity of borders, transit zones at airports and ports, police vehicles, medical rooms and local courts. In many OSCE participating States, hotlines for victims of trafficking have been set up and are advertised at entry points, police checkpoints and stations. Similar information sheets can spread information on the work of border police monitors and provide alternatives for direct contact.

Interviewing in the context of border police monitoring can often entail additional difficulties, due to the lack of privacy, space and time for monitors to ensure adequate settings for interview, both with migrants and with other stakeholders present at the border, on board vehicles and in relevant facilities.

Establishing a relationship of trust is necessary for monitors to be able to record personal experiences. Hearing someone's experience recounted in their own words is essential and cannot be replaced by the use of questionnaires or by making deductions alone from seemingly similar group experiences. If a safe and secure environment cannot be guaranteed where the monitoring takes place, monitors should strive to follow-up and interview, remotely if required, any person who seeks to talk to them.

Authorities should facilitate, or at least refrain from hindering, the establishment of communication channels between monitors and interviewees, whether they are in detention or open accommodation. The UN Office of the High Commissioner for Human Rights' *Manual on Human Rights Monitoring* contains detailed guidance for monitors on human rights interviewing, including points on interviewing people in a situation of vulnerability, which can include women, children, trauma survivors, people with disabilities and others.⁷⁵

In the context of border policing, operational documents are also important for monitors to check and consider: e.g. deployment areas and operational arrangements, codes of conduct, parameters of co-operation with other agencies, international organizations and neighbouring states. A monitoring agreement with law enforcement agencies should set out the rules and limitations to accessing internal files. Monitors should not be faced with excessive administrative obstacles to access those documents as part of their work.

4.5. Ethics and communication

Monitors must at all times be mindful of their behaviour and of the perception of their work both by law enforcement and by foreign nationals who are subject to border police operations. They should at all times be recognizable as independent from law enforcement and demonstrate professional integrity so that their actions are not perceived as biased or partial and so that they can earn the trust of their interlocutors.

⁷⁵ UN OHCHR, *Training Manual on Human Rights Monitoring*, Chapter 11: Interviewing, 2014.

Monitors should strive to observe rather than take an active role or intervene in individual cases, even when a situation does not allow for immediate and full assessment of all relevant aspects and parameters. People targeted by border policing are often vulnerable and may have concerns regarding the identity and role of the monitors. Monitors must act mindfully about such vulnerabilities and avoid doing harm.

Whenever monitors make observations of a particular individual case, they should seek the informed consent of the person whose case is monitored. The process of obtaining informed consent requires that monitors explain the parameters of their work (institutional/professional background, monitoring methodology, purpose of visit/interview, objectives and outcome of monitoring), and ensure interlocutors actively choose to grant, maintain or withdraw consent for the recording and use of their experiences, including the handling of any personal data in line with applicable privacy and data protection rules and standards. Monitors should be mindful and clear to individuals that consent for observation and documentation is not consent for intervention nor representations on behalf of the individual.

Border police monitors should be trained professionally to be able to exercise good judgment regarding the deployment of policing measures, including any use of force and use of constraints on migrants. They should be able and empowered to voice concerns of potentially excessive use of force with law enforcement officers without delay, and in so doing perform a direct preventive and corrective function. They should however respect the authorities' executive powers and professional judgment in using force, and not endanger the safety and security of any person. While the presence of monitors can have a beneficial, de-escalating effect for all, this can only be assured if communication with law enforcement is active, unbiased and respects the roles and responsibilities of each party. Accountability for any allegations of abuse of power and potential breaches of human rights by on-duty officers observed during monitoring should be followed up through reporting and advocacy, and referral to the appropriate procedure (complaints mechanisms, internal inspection and disciplinary procedures, and legal action as appropriate).

Principles to guide monitors' behaviour and communication:

- Do no harm;
- exercise good judgment;
- respect the authorities and the staff in charge;
- respect the dignity of all persons;
- respect confidentiality;
- respect security;
- respect individual experience;
- be consistent, persistent and patient;
- be accurate and precise;

- be sensitive;
- be objective;
- be credible;
- be visible;
- be mindful of body language;
- behave with integrity;
- manage expectations, including by clarifying the purpose of monitoring and its limitations;
- do not give biased information, but provide support in accessing legal aid and other services;
- don't interrogate, but listen to concerns.

Based on the Council of Europe's guidance, *Visiting places where children are deprived of their liberty as a result of immigration procedures*, Guide for parliamentarians, 2017.

4.6. Monitoring as a continuous and systematic activity

It is important to view and understand border police monitoring as a continuous process.

Effective monitoring has to be systematic and strive to triangulate and standardise the information that is collected, in order to achieve systemic improvements. Monitors need to verify information that they receive from their sources and cross-check them against other sources of information that they have access to: they should seek out the point of view of authorities and other professionals relevant in the particular context and check files and records, as well as the applicable rules and regulations.

Monitors are not arbiters, but observers who should aim to synthesize collected information, make their own observations, and make actionable recommendations to authorities. In order to prevent multiplication of violations and address systemic shortcomings, they should seek to maintain regular contact and follow up on previous recommendations through regular check-ins with identified decision-makers and operational entities to whom the recommendations are addressed.

As an example, in the CoE area, the PACE and APT have recommended to parliamentarians visiting immigration detention centres that they think of monitoring as a three-step process, which includes the preparation, the conduct of the visit, and the follow-up of the visit.⁷⁶ This framing of monitoring as a continuous process is important wherever it is undertaken.

4.7. Further guidance

Didactic materials used in professional training for law enforcement officers on human rights obligations can also be valuable sources of insight for independent monitors. Most states have developed their own rulebooks and operational guidance, taking international and national legal

⁷⁶ PACE and APT, *Visiting immigration detention centres: A guide for parliamentarians*, 2013, p. 33.

obligations as a basis. OSCE participating States have made a range of commitments to respect fundamental rights in their border management, and the OSCE Border Management Staff College curriculum explicitly includes human rights in the context of border security and management (see box below).

At the level of the EU, Frontex has developed a fundamental rights training course for border guards to mainstream rules and standards applicable in the EU with border forces seconded to the agency for deployment.⁷⁷ The FRA regularly monitors emerging human rights concerns in relation to asylum and migration management, and has issued specific guidance for law enforcement on apprehension of migrants in an irregular situation and on how to reduce the risk of *refoulement*, including when working in or together with third countries.⁷⁸

The role of the OSCE Border Management Staff College⁷⁹

The OSCE Border Management Staff College is an educational institution set up in 2009 with the mission to enhance the knowledge of senior border security and management officials and promote greater co-operation and exchange of information among them. Its trainings are available to all 57 participating States of the OSCE as well as 11 Partners for Co-operation from its base in Dushanbe, Tajikistan.

As part of its curriculum and methodology, the College provides up-to-date study and exchange opportunities for officials, including on human rights in the context of border security and management. The courses embody the OSCE concept of making borders more secure and open at the same time. Courses are delivered to senior officials with the view to enable them to develop and implement systemic improvements in operations at home.

The course methodology of the College is focussed on case studies and practical exercises, during which officers explore how policing interacts with rights (such as rights to freedom of movement, non-discrimination, and to privacy), and which practices may lead to human rights violations (e.g. discriminatory profiling).

From its inception, the College has emphasized the importance of training that enables participants to co-operate on four levels: 1) among all agencies at state level; 2) with agencies of neighbouring states; 3) across regions; and 4) globally. This approach has only been reinforced by the evolving concept of border security and management recognized as inseparable from broader national security and policing.

The curriculum also covers how agencies can change to become increasingly co-operative rather than competitive, and how outreach to the public – local populations as well as civil society – can support their work. While monitoring initiatives can be met with reluctance on the side of agencies, the College's experience is that training on co-operation with civil society organizations has increased the recognition of their beneficial role and contributed to a change in attitudes.

To build on these existing efforts, a standardized methodology, which a) defines the parameters of co-operation with monitoring organizations and b) provides implementation training, has been recognized as a possible next step to mainstream monitoring as part of the educational programme of the College. Additionally, such standardization would provide clear and actionable recommendations for participating States' agencies to follow up on after training.

⁷⁷ Frontex, *Fundamental rights training for border guards*, 2013.

⁷⁸ FRA, *Apprehension of migrants in an irregular situation – fundamental rights considerations*, 2013; *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, 2016.

⁷⁹ Information obtained as part of a video interview with Mr. Ihar Kuzminich, the College's acting director and chief of training and education, on 3 February 2021.

Currently, border police monitoring does not have a standardized methodology. Stakeholders in OSCE participating States can and should consider transferable knowledge from other types of monitoring. United Nations agencies, the Council of Europe, the OSCE as well as non-governmental organizations provide ample guidance beyond that noted above, specifically immigration and border governance-related resources. A non-exhaustive selection is given below.

Further reading and manuals on human rights monitoring relevant to border police monitoring

Amnesty International, *Monitoring and Investigating Equipment used in Human Rights Abuses*. A handbook on monitoring and investigating MSP equipment, 2005.

Amnesty International, *Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 2015.

APT, *Monitoring Police Custody: A Practical Guide*, 2013.

APT & UNHCR, *Monitoring immigration detention: A practical manual*, 2014.

APT and Penal Reform International (PRI), *Instruments of Restraint: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, 2015.

Defence for Children International-Belgium, *Practical guide: monitoring places where children are deprived of their liberty*, 2016.

ODIHR and APT, *Guidance – Monitoring Places of Detention through the COVID-19 Pandemic*, 2020.

ODIHR and Penal Reform International, *Guidance Document on the Nelson Mandela Rules*, 2018.

ODIHR, *Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring*, A Guidance Note for Oversight Mechanisms, January 2021, <https://www.osce.org/monitoring-SGBV-in-detention>.

Omega Research Foundation and University of Exeter, *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors*, 2018.

UN OHCHR, *Training Manual on Human Rights Monitoring*, 2014.

UN OHCHR, *Preventing torture, The Role of National Preventive Mechanisms*, A Practical Guide, 2018.

5. Examples of current practices in border police monitoring

Human rights monitoring across the OSCE region is performed by a diverse range of stakeholders. Monitors may be staff of NHRIs, ombuds institutions, non-governmental organizations, faith-based and humanitarian organizations, international monitoring bodies and experts, independent researchers and professionals, but also members of parliament and others effectively performing such work regularly or periodically.

As part of this research, stakeholders already involved in human rights monitoring, most commonly detention and forced return monitoring, were invited to share and reflect on their experiences. In order to encourage the participation of a diverse group of respondents, inputs were sought through established communication channels, for example with NPMs ODIHR had previously co-operated with. In addition, ombuds institutions across the OSCE region were contacted, as were selected individual experts and organizations, independent networks of detention experts, as well as asylum and migration professionals. Selected Ministries of Interior, National Police Directorates and Border Guards were also contacted to gather inputs on monitoring co-operation from the point of view of state authorities and law enforcement agencies.⁸⁰

Some of the key questions asked as part of the information collection for this report section were:

- Who is allowed to monitor? What is monitored? What arrangements are in place to ensure the independence of monitors?
- Are monitors allowed to access critical locations and observe procedures that have a high risk of human rights violations?
- What is the result of monitoring? Are there avenues to follow up with concerns raised with, or observed and reported by, monitors?
- What is the impact of monitoring on organizations and their activities? Are there adequate resources to sustain monitoring? Has monitoring impacted on staff well-being? Has it caused an administrative, communication or reputational concern?

Overall, respondents listed the following as key factors impacting on their monitoring experience:

⁸⁰ ODIHR is grateful for the inputs shared by the European Network of National Human Rights Institutions (ENNHRI), the International Detention Coalition and the Platform for International Co-operation on Undocumented Migrants (PICUM) for encouraging their members to participate by filling out a questionnaire for this research. The UN Office of the High Commissioner for Human Rights and the OSCE Border Management Staff College also provided valuable inputs to this research.

- scope of monitoring;
- co-operation with state authorities and other non-state actors;
- barriers to effective independent monitoring.

In this section, a selection of current practices is shared below, grouped around these three key factors identified. In presenting these examples, the report focuses on practices and issues that emerged either as recommendable current practice or illustrations of existing barriers.

It should be noted at the outset that most participating States in the region are yet to put in place regular and co-ordinated co-operation with border police monitors and this was reflected in the great majority of inputs gathered. This section features a selection of practices illustrative of the main modalities for co-operation between law enforcement agencies and human rights monitors, presents examples of areas covered by different types of monitoring and provides practical examples of other state and non-state actors who are in the process of setting up such arrangements or who are yet to embark on this.

5.1. Scope of human rights monitoring at borders

The scope of monitoring border police operations varies across the region. Where NPMs have been set up, monitoring at borders is often carried out within that mandate. Elsewhere, monitoring may be prescribed in law but does not fall under torture prevention, and is rather part of institutionalized oversight or inspection. Other forms of co-operation exist based on agreements at the operational level and provide grounds for ad hoc, thematic, or periodic monitoring.

The NPM mandate provides a straightforward opportunity for monitors and law enforcement agencies to assess and evaluate actions at borders under the same criteria as other policing and detention practices, and serves the core NPM function of preventing torture and other cruel, inhuman or degrading treatment or punishment.

Another approach mainstreamed by the UNHCR and its partners includes monitoring activities as part of multi-sectoral support provided at borders, without prejudice to the immigration status of people crossing borders. This approach is based on the principle that protection needs and rights arise before refugees are formally recognized by states, and that monitoring law enforcement supports better responses to such needs by ensuring that no actions outside the law are taken against people crossing borders, and that robust safeguards are implemented during border procedures. UNHCR-led monitoring can thus in practice improve protection of all migrants' rights.

The Ombudsman in **Bulgaria** is one of those bodies which carries out detention monitoring as part of an NPM mandate. A special Ombudsman Act codifies the competences of the office, and ensures it has access, without the need for advance notification, to all places of detention, including closed reception centres and police facilities used in the context of border policing

and migration management. The NPM includes monitoring of material conditions, and availability of health care, legal assistance, and activities for persons deprived of their liberty. The Ombudsman's monitors can interview any detainee in private and can access all information regarding the procedures and measures put in place in specific cases. Each inspection is documented in a report and followed up with the appropriate law enforcement agency. Since 2010, the Ombudsman's monitoring has been complemented by a co-operative arrangement between the UNHCR, the Bulgarian Helsinki Committee and the Border Police, under a memorandum of understanding enabling all actors to monitor ports of entry. This activity has focused on land borders and airport transit zones.⁸¹

In **Finland**, the Parliamentary Ombudsman oversees the legality of actions taken by law enforcement agencies at borders, primarily by investigating complaints received, but also through investigations launched on its own initiative. The Ombudsman can launch investigations based on information that is brought to its attention through any channel (e.g. media and NGO reports), and is not restricted territorially or in the number of monitoring initiatives it undertakes. It has a team of up to six people that take part in monitoring visits. In 2014, the Ombudsman became the NPM in Finland; under this mandate, the institution carries out regular unannounced inspections to places where migrants may be deprived of liberty, including police stations, Border Guard detention facilities, and detention centres for foreigners. A report on the findings and recommendations from visits carried out under the NPM mandate is issued annually.⁸² Field visits to Border Guard installations have been among the activities most affected by COVID-19, as the institution had to suspend both scheduled and unscheduled visits until further notice.⁸³

Since 2015, the Office of the Public Defender (the ombuds institution) of **Georgia** has conducted border monitoring, while simultaneously delivering asylum law training for border police. Additionally, it has been able to provide the border police with a code of conduct in cases of asylum claims at borders, paying particular attention to non-discrimination safeguards and to preventing the penalization of illegal entry for asylum seekers. The Organic Law on The Public Defender of Georgia enables unhindered access and monitoring of all state bodies by the ombuds institution. The Office of the Public Defender revises and updates its monitoring methodology and checklists each year to take into account recent developments.⁸⁴

In **Greece**, the focus for local organization Human Rights 360 has been the monitoring of procedures related to newly arriving migrants seeking international protection, including identification and asylum referrals and interviews, as well as reception conditions for asylum-seekers, including child asylum-seekers. The scope of the organization's monitoring work extends to actions by national agencies as well as Frontex in the Evros land border region. The

⁸¹ Information obtained as part of a questionnaire response submitted on 16 November 2020.

⁸² See e. g. Parliamentary Ombudsman of Finland, [National Preventive Mechanism against Torture: Summary of the Annual Report](#), 2019.

⁸³ Information obtained as part of a questionnaire response submitted on 5 November 2020.

⁸⁴ Information obtained as part of a questionnaire response submitted on 17 November 2020.

complexity of the local situation – a militarized border zone, reports of pushbacks and other unlawful actions, and conditions in Greek reception and identification centres – has prompted the NGO to develop its own methodology on monitoring to work around access restrictions.⁸⁵

Through its research, Human Rights 360 has been able to identify and report on patterns of human rights violations and unlawful practices. It has also managed to develop its capacities to match an increase in needs. Since the outbreak of the COVID-19 pandemic, the organization has carried out remote monitoring focusing on accommodation conditions for asylum seekers and following up on concerns through frequent communication with staff at asylum reception and identification centres and other actors involved in reception.

Good practice: monitoring co-operation arrangement enabling frequent and widespread access to critical locations and processes

The **Romanian** mission of the Jesuit Refugee Service (JRS Romania) has been engaged in comprehensive monitoring of the situation of migrants at borders and in-country. It currently has access to all border and transit areas as well as places of detention (border crossing points, international airports, border sectors, public custody centres) in Romania.⁸⁶

The organization is able to conduct an average of four monitoring visits per month on the basis of a memorandum of understanding between the General Inspectorate of the Border Police and UNHCR, with JRS Romania implementing the monitoring activities. The scope of the memorandum allows:

- border monitoring visits to border crossing points, transit areas, international airports, border sectors and public custody centres;
- targeted interventions on individual cases or assistance for border incidents requiring protection response;
- monitoring the availability and dissemination of age, gender and diversity sensitive protection information at the border for potential people of concern;
- weekly monitoring visits to places of detention.

JRS Romania has used the information collected during monitoring in the course of evidence-based advocacy and to conduct training at local level for border police officials on access to territory, access to the asylum procedure, applicable standards, and the treatment of vulnerable individuals. It has also contributed to developing educational materials on fundamental rights and refugee rights for police colleges.

Geographically, JRS Romania has focussed its resources on monitoring the points of entry with the most entrances and asylum applicants. A direct communication channel linking the Border Police, UNHCR and NGOs have enabled interventions to take place swiftly when needed. The organization's access to people entering Romania

⁸⁵ Human Rights 360 actively seeks to record the testimonies of victims of pushbacks by collecting information through a standardised questionnaire, as well as photo and video evidence that individuals pushed back manage to take and share with friends, relatives and NGOs before border authorities confiscate their belongings (a frequent form of retaliation for irregular border crossing in the region). It has teamed up with the UK-based research group Forensic Architecture, which provides expertise and tools to analyse the audio-visual material and confirm key metadata of the recorded incidents. Information obtained as part of a questionnaire response submitted on 8 November 2020 and through e-mail exchange on 19 November 2020.

⁸⁶ Information obtained as part of a questionnaire response submitted on 27 October 2020.

has been guaranteed, with the exception of the first 24 hours, when migrants entering Romania are under investigation and as a general rule cannot be visited.⁸⁷

JRS Romania has recognized a gap in capacity-building for border guards at early stages of their professional education that should be addressed to increase awareness of protection-sensitive border management, including early identification and referral of people with specific needs.

In the **United Kingdom**, 21 statutory bodies make up the National Preventive Mechanism.⁸⁸ Her Majesty's Inspectorate of Prisons (HMIP) is responsible for monitoring immigration detention as well as removal. HMIP focuses on outcomes for detainees, using independent inspection standards derived from international human rights instruments. While immigration detention inspection mirrors that of regular prisons, inspectors also have access to immigration casework for those detained (and in most cases awaiting removal).⁸⁹ Inspections also routinely involve a detainee survey which is translated into 14 languages and includes up to 80 questions about the individual's experience in detention.⁹⁰ The inspectorate's main objectives are to improve treatment of and conditions for those in custody, including people in short-term holding facilities and during removal, and to prevent inhuman or degrading treatment. HMIP's immigration expert reported in 2016 that its inspection tends to have broad support from detention centre managers.⁹¹

Also in the **United Kingdom**, an Independent Chief Inspector of Borders and Immigration (ICIBI) was established by the UK Borders Act 2007 and is an institution separate from the National Preventive Mechanism. The UK Borders Act provides the legislative framework for the inspection of the efficiency and effectiveness of immigration, asylum, nationality and customs functions of state authorities, and empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. To avoid overlap with the HMIP, it does not monitor detention centres, short-term holding facilities and returns.⁹² The Inspector's stated purpose is "to help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection."⁹³ The ICIBI has developed a three-stage independent inspection process that takes up to 100 days (20 weeks) from start to finish. All its reports are published, along with the Home Office's response to its findings and recommendations.⁹⁴ Positively, both HMIP and the ICIBI have made public their inspection criteria, known as *Expectations*, against

⁸⁷ NB. This limited access to and contact with migrants in transit areas made it more difficult to corroborate and follow up on any reports of border violence.

⁸⁸ See: *Information page on the National Preventive Mechanism*, undated.

⁸⁹ HM Chief Inspector of Prisons for England and Wales, *Annual Report 2019-20*, pp. 75-82.

⁹⁰ Hindpal Singh Bhui, "Can Immigration Detention Produce Meaningful Change in Immigration Detention?", Global Detention Project Working Paper No. 12, May 2016.

⁹¹ *Ibid.*

⁹² Independent Chief Inspector of Borders and Immigration, *Annual Report for the period 1 April 2019 to 31 March 2020*, p. 8.

⁹³ *Ibid.*, p. 9.

⁹⁴ Information obtained in an email response dated 16 November 2020.

which they assess the performance of state-run facilities as well as those operated by private security companies.

In the **United States**, the Women’s Refugee Commission (WRC) has monitored immigration detention facilities for more than 25 years. The WRC conducts mostly thematic monitoring, focusing on the rights and needs of women, children, and families in US immigration custody, and tries to prioritize locations and facilities where they have detected emerging issues either in a facility or relating to a development in policy. The organization has explored monitoring opportunities with all relevant authorities, and in addition to government agencies, its monitoring includes private security companies involved in the operation of detention facilities. While its scope is specific, WRC typically seeks to meet with all local actors and to take comprehensive tours of facilities, visiting as many areas as possible and talking to a diverse pool of staff to assess conditions. The experience of WRC is that access to facilities, staff and officials can be very inconsistent and arbitrary, and that negotiating privacy and confidentiality for interviews with detained individuals, particularly with children, is often a challenge. There are few mechanisms that formally permit monitoring in the US, and in most cases immigration officials have discretionary powers in determining what level of access is granted. However, monitoring is a critical piece of WRC's mission and a priority activity that feeds into advocacy and other programmatic work.⁹⁵

5.2. Co-operation between authorities and other actors

The exercise of participating States’ rights to maintain national security and to control border lines and cross-border traffic involves multifarious activities and requires the co-operation of specialized agencies with narrowly defined roles and responsibilities on a daily basis. These include police, immigration and asylum, customs, health, anti-smuggling and -trafficking, and other professional agencies. Various actors at borders already rely on the expertise of non-governmental partners in screening, identifying and treating individuals who may require specialized care at entry points and in other contexts of border security and governance.

In the context of border police operations, specialized care can mean:

- emergency health care;
- first aid;
- identification and special attention to pregnant women;
- concern for the elderly;
- access to and provision of water and food;
- gender-sensitive processes and facilities;
- child-sensitive measures;

⁹⁵ Information obtained as part of a questionnaire response submitted on 16 November 2020.

- concern for individuals suspected of being torture survivors;
- measures and infrastructure for people with disabilities;
- access to consular services, if asked for.

Such specialized care is often provided by non-governmental and other non-border police partners.

Source: Frontex, *Fundamental rights training for border guards*, 2013.

To provide these different kinds of specialized care to individuals, authorities engage the services of international humanitarian organizations, as well as their local partners. Along migration routes, the UNHCR, the IOM or the ICRC are often involved in monitoring cross-border movements, and record detailed information on the profiles and needs of international migrants. UNHCR's monitoring mandate extends to assessing access to asylum procedures for those who wish to seek protection in the country.

UNHCR-led joint border monitoring missions

In several countries in Central and Eastern Europe, the Balkans and the Caucasus, UNHCR has co-ordinated joint border monitoring missions to targeted border crossing points which include staff of UNHCR operations on both sides of the border. These missions have proven to be effective in informing a more comprehensive understanding of the practices applied as well as the challenges faced in a particular local context.

Staff from the two UNHCR offices would meet at a predetermined crossing point, having duly informed authorities on both sides of the border. They would participate in the consultations with border officials of both states, thereby gaining insights into practices and concerns from both perspectives. They would also inquire about communication practices at adjacent border crossing points, including the availability and use of a hotline between the agencies, and approaches taken in cases where entry is refused or individuals are "stuck" between the crossing points, unable to enter or to return to a particular state.

When immigration staff and border guards from the neighbouring state join for consultations, such occasions allow for informal exchanges and can pave the way for improved future communications in situ. Experience indicates that these exchanges have the potential to build trust between officials and the UNHCR by demonstrating that the organization's approach and communication are consistent and transparent on both sides of the border.

Occasionally, implementing partners are also involved in those missions, in consultation with authorities, to discuss modalities of timely and effective assistance to persons who have been identified at the crossing point as in a situation of vulnerability and/or needing support in accessing relevant asylum authorities. On some occasions, joint border monitoring missions have been paired with decentralized, short training sessions, during which the participation of border officials has offered further insight into specific local practices, challenges and appropriate remedies.⁹⁶

A common practice in the case of engaging international organizations is to sign memoranda of understanding and operational agreements defining the parameters of their presence and activities at borders. International organizations often engage local organizations as partners in delivering these activities, acting as a bridge between state authorities and these local partners.

⁹⁶ Information obtained as part of a video interview and e-mail communication with the UNHCR Liaison Office to the OSCE, 21 and 30 April 2021.

UNHCR in particular has sought to empower local NGOs to take part in border monitoring and to gain access and experience through tripartite agreements.⁹⁷ In other cases, states have developed national frameworks for co-operation with independent oversight bodies and civil society monitors, either based on legal provisions or operational agreements, and engage with them directly as independent observers. A selection of current practices on modes of co-operation is provided below.

In **Albania**, an increase since 2016 in cross-border migration and in asylum requests filed at the border has prompted a co-ordinated response. While the Albanian authorities have acted to extend capacities to provide reception facilities for asylum-seekers, UNHCR has increased its presence and monitoring at border areas, implementing three main activities: 1) providing material assistance to people intercepted at borders; 2) liaising with representatives of the Border and Migration Police to ensure each intercepted person has access to screening procedures guaranteed in law and that informal returns are prevented; and, 3) identifying and referring individuals with specific needs for further care. UNHCR has also entered into a formal co-operation with the People's Advocate, the Albanian ombuds institution, who now deploys monitoring delegates to border areas.⁹⁸ Acting as a facilitator among national actors, UNHCR has also supported the involvement of Caritas Albania, an organization primarily providing humanitarian aid, in monitoring. This co-operation has enabled Caritas Albania to focus on "strengthening the capacity of authorities and other local actors to uphold refugee rights and provide robust case management".⁹⁹

In **Canada**, the Canadian Red Cross Society has been involved in monitoring immigration detention since 1999, within the framework of periodically renewed co-operation agreements. Most recently it ran its Immigration Detention Monitoring Program based on a 2017-19 Agreement with the Canada Border Services Agency (CBSA).¹⁰⁰ The agreement enables the Red Cross to monitor: 1) material conditions of detention; 2) the treatment of detainees; 3) legal guarantees and safeguards; and, 4) detainees' ability to maintain contact with their families.¹⁰¹ This latest programme has enabled the Red Cross to carry out fifteen visits to immigration detention facilities within the first year of its implementation. For its part, the CBSA has acted to increase the agency's transparency by publishing on its website both the monitoring reports and its responses to findings and recommendations.

In **Latvia**, the State Border Guard is responsible for the identification of migrants and asylum-seekers, including registering asylum applications. It is also the authority carrying out returns. The State Border Guard co-operates with various monitoring actors during those different migration-related procedures. By law, it co-operates with the Ombudsman who monitors return

⁹⁷ See *supra* note 40.

⁹⁸ See [UNHCR South Eastern Europe/Albania](#), undated.

⁹⁹ See [Caritas at the border: Caritas Albania's work with migrants](#), 15 October 2019.

¹⁰⁰ See [CBSA: National Immigration Detention Framework](#), undated.

¹⁰¹ See [Canadian Red Cross Society: Immigration Detention Monitoring Program Annual Monitoring Activity Report](#), September 2017 to March 2018.

procedures in accordance with the EU Return Directive's provisions transposed into national law. The Ombudsman's office has widespread access to return-related procedures and documentation, and the right to decide on which removal case (and stages of it) to monitor, which premises to visit, and which return operations to accompany. Under Latvian asylum procedures, the basis for monitoring is a 2010 memorandum of understanding between the State Border Guard and the Regional Office of the UNHCR for Baltic and Nordic Countries on co-operation to support the access of asylum-seekers to the territory and the asylum procedures of the Republic of Latvia. In practice, monitoring is carried out by the Latvian Centre for Human Rights, an UNHCR partner NGO, which is allowed to visit border crossing points and the State Border Guard accommodation centre for detained foreigners. Both the NGO and the Ombudsman's office are required to file reports of their findings and conclusions with the State Border Guard and with the Ministry of Interior respectively. The State Border Guard considers it good practice that the monitors immediately inform them of their findings.¹⁰²

In **Moldova**, the Office of the People's Advocate noted the benefit of multi-sectoral monitoring teams consisting of state authorities (the General Inspectorate of Border Police and the Migration and Asylum Office) as well as non-state actors (the Office of the People's Advocate and NGOs) as a way to fast-track actions to follow up on recommendations from monitoring.¹⁰³ The Moldovan non-governmental organization, the Law Centre of Advocates, has been part of these multi-sectoral teams since 2009, based on a memorandum signed with the Border Police. The Law Centre monitors both border crossing points and temporary detention facilities operated by the Border Police, as well as referral procedures for asylum seekers between the Border Police and the asylum authority.¹⁰⁴ The results of monitoring and thematic studies are jointly published as a result of this formalized co-operation.¹⁰⁵

Good practice: 'Ombudsman plus' model in Slovenia

In **Slovenia**, the Human Rights Ombudsman has a wide range of powers to monitor authorities and procedures related to immigration and asylum both as an NPM and as part of its general mandate. The Ombudsman's monitoring includes visits to police stations, to the migrant detention centre in Postojna and to the asylum reception centre in Ljubljana, including its auxiliary facilities. The visits are usually unannounced and include inspection of facilities, interviews with persons deprived of their liberty, examination of files, sharing of investigative reports with authorities and recommending changes and improvements.¹⁰⁶

The Ombudsman's office carried out over forty visits to police stations and the Postojna centre under the NPM mandate in 2019-2020, and other visits took place under its broader mandate to investigate specific complaints. The visits focused on police stations located near the border or otherwise involved with processing irregularly arriving migrants.

The 'Ombudsman plus' model means that the NPM teams conducting monitoring in practice consist of members of the Ombudsman's staff as well as representatives of non-governmental organizations. The nine organizations

¹⁰² Information obtained as part of e-mail communication on 24 November 2020.

¹⁰³ Information obtained as part of a questionnaire response submitted on 24 October 2020.

¹⁰⁴ Information obtained as part of an e-mail exchange on 28 January 2021.

¹⁰⁵ See e.g. [People's Advocate and Law Centre of Advocates: Upholding the rights of foreign citizens in state custody](#), 2019.

¹⁰⁶ Information obtained as part of a questionnaire response submitted on 16 November 2020.

currently participating in monitoring were selected on the basis of a public call for a three-year period ending in December 2021 (with the possibility of a one-year extension).

The legal framework allows effective implementation of monitoring, practical co-operation with authorities has been satisfactory, and the Ombudsman's activities are widely recognized as legitimate and necessary. On the other hand, the Ombudsman's office highlighted that the ministries responsible are often insufficiently engaged in solving the systemic problems identified through monitoring.

The Ombudsman's office emphasized during this research consultation that the participation of NGOs in the NPM model is a good practice as the organizations contributed significantly to the successful implementation of monitoring activities and were a source of additional information and expertise. For the NGOs, the NPM collaboration provided an avenue to access places of deprivation of liberty which they might otherwise have had difficulty accessing.

One of the NGOs participating in the model, the Legal-Informational Centre (*Pravno-informacijski center*, PIC) has been a partner in the Slovenian NPM since 2008, and also has experience from participation as an implementing partners in the UNHCR-led monitoring project on border management, access to territory and procedure (2008-2016).¹⁰⁷ The PIC described the 'Ombudsman plus' model as good practice and as a co-operation framework that provides the best level of access in their experience of such arrangements to date. PIC observed that the previous memorandum of understanding¹⁰⁸ limited their ability to identify misuses of power or violations or for robust follow-up, while the 'Ombudsman plus' model offers better access and opportunities for leverage.

Again in the case of **Slovenia**, the long-standing monitoring arrangement established between the Slovenian Police and UNHCR was recognized by the Police as contributing to the development of their guidelines and training programmes. Beyond border management, the Police's role in the asylum procedure is first reception and identification in case of irregular entry. Based on the agreement with UNHCR, monitors can access any police station, observe those procedures and inspect individual documentation; they can also speak directly with people in the Police's custody. The Slovenian Police emphasized that the Police Force thoroughly examines each report by monitors and takes the suggestions and findings into account in its internal procedures and guidelines. The Police Force's training courses include several elements on human rights knowledge, as well as on skills and attitudes, modules on international protection, non-discrimination and gender mainstreaming.¹⁰⁹

Good practice: Community-led documentation campaigns

The Border Network for Human Rights (BNHR) is an organization in El Paso, Texas, US. Since 2000, the organization has trained over a hundred civilian monitors who volunteer to collect cases of allegations of abuse by law enforcement impacting newly arrived migrants and local communities alike. Each year, a month-long documentation campaign is rolled out focusing on areas with high incidence of complaints (e.g. arbitrary use of detention, unlawful house searches, deportations).¹¹⁰ On an annual basis a report is then presented to the public,

¹⁰⁷ Information obtained as part of a questionnaire response submitted on 9 November 2020.

¹⁰⁸ See *supra* note 40.

¹⁰⁹ Information obtained as part of e-mail interview administered on 30 November 2020.

¹¹⁰ Information obtained as part of a video interview on 11 November 2020.

in which recommendations are made to U.S. Customs and Border Protection (CBP) and other relevant agencies.¹¹¹

Since launching the documentation campaign, BNHR has managed to achieve incremental changes in attitudes of law enforcement towards migrants through employing a dual strategy. Firstly, it continues to transfer knowledge from legal professionals through “know your rights” training to empower local residents to become human rights monitors and by encouraging them to build trust and relationships with vulnerable migrants in their communities and canvass regularly in their neighbourhoods. Secondly, it has developed active communication channels with local police and CBP leadership, which has acknowledged the validity of the organization’s documentation work and engaged a non-uniformed, unarmed liaison officer to communicate with the group and with affected communities.

At the local level, this co-operation has led to improved processes and a documented decrease of allegations against the CBP. Joint advocacy efforts have also pushed Congress members to introduce bipartisan bills aiming to increase transparency, accountability, and community engagement in the CBP, and to propose an independent oversight body for border security activities, in order to protect due process and human rights in border areas.¹¹²

5.3. Barriers to effective independent monitoring

Non-governmental stakeholders consulted by ODIHR as part of this research reported three main issues that often impact, and sometimes impede, the implementation of their monitoring activities: 1) lack of access to critical locations and information; 2) lack of funding to cover the significant costs associated with monitoring; and, in some participating States, 3) a hostile climate and attempts to criminalize or administratively sanction groups and individuals supporting migrants and refugees to access their rights.

Limitations in access

Information gathered through consultation for this research indicated that the need to balance security concerns on the side of the state authorities, while legitimate, has often led to restrictions for monitors in practice, which were sometimes perceived as unnecessary, arbitrary and disproportionate. Wholesale restrictions on monitoring access to key locations is contrary to the spirit of co-operation and impacts heavily on the perceived level of transparency and accountability of border police.

Based in Brest, **Belarus**, the refugee programme of the NGO Human Constanta has documented the summary return of large groups of people from Poland at the Brest-Terespol border crossing since 2016. The organization has focused on entry and return procedures, as well as access to asylum procedures for migrants in transit who wished to submit asylum claims upon entry to Poland. As monitors’ physical access to the entry point is virtually impossible, and as Polish NGOs are also systematically prevented from accessing locations to observe procedures, the organization resorts to collecting testimonies from people after they have been expelled and returned to Belarus in order to record statistical data as well as trends in law enforcement

¹¹¹ See e. g. BNHR, *The State of Human Rights at the US-Mexico Border*, June 2019.

¹¹² See e. g. [H.R.3020 - Border Enforcement Accountability, Oversight, and Community Engagement Act of 2017](#), introduced 22 June 2017.

practices.¹¹³ Human Constanta has regularly co-operated with Polish NGOs in documenting and reporting on violations at the border, and in jointly advocating for a change in practices.¹¹⁴

In **Greece**, the Thessaloniki-based Mobile Info Team shared information on the challenges they faced in accessing areas critical to monitor. Namely, the land border between Greece and Turkey in the Evros region is militarized and there is minimal access for private individuals, volunteers, civil society organizations or other external monitors not affiliated with an international organization. The Mobile Info Team non-governmental organization regularly and systematically collects testimonies from people who were subjected to pushbacks, identifying practices and trends, and mapping relevant police facilities in the land border region. The NGO reported that the COVID-19 pandemic has further exacerbated their lack of access as travel to borders for monitoring purposes has become impossible. Additionally, recently introduced national legislative provisions have significantly restricted the space for civil society organizations providing services to asylum-seekers and refugees by imposing burdensome administrative requirements.¹¹⁵

In **North Macedonia**, the Macedonian Young Lawyers' Association (MYLA) has been conducting self-initiated border monitoring since 2015 in the camps situated at entry and exit points in the South and North of the country through which most migrants transit on their journey. The organization has advocated for the development of a monitoring model based on regional good practices, however it has reported a lack of political will as a key obstacle to it entering into co-operation with the Ministry of Interior and being granted regular access to locations critical to monitor. As such, their activity is currently carried out without the consent of authorities and does not extend to the border lines themselves. MYLA's staff are however able to monitor and occasionally prevent pushbacks and unlawful returns through their presence and the legal support offered in the camps in the vicinity of borders. Its presence in camps has also enabled MYLA to map movements and detect patterns in police responses.¹¹⁶

Limitations in funding

The efficiency and sustainability of monitoring activities are contingent on adequate resourcing that takes into account the realistic costs associated with these activities, yet does not jeopardize their independence. Some civil society respondents who had succeeded in entering into co-operation with law enforcement have had to restrict their work due to lack of access to appropriate funding.

¹¹³ See e.g. Human Constanta, [Report on the situation with transit refugees on the Belarusian-Polish border \(January–March 2020\)](#), April 2020.

¹¹⁴ See e.g. Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), [At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okecie Airport](#), Warsaw 2016; Joint petition supported by Belarusian and Polish NGOs: [Polish Border Guard pushes back Chechen asylum seekers](#).

¹¹⁵ Information obtained as part of a questionnaire response submitted on 16 November 2020. See also: Council of Europe Expert Council on NGO Law, [Addendum to the Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Greek Legislation on NGO Registration](#), 23 November 2020.

¹¹⁶ Information obtained as part of a questionnaire response submitted on 30 November 2020.

In **Belgium**, ‘Myria’, the Federal Migration Centre, is an independent institution that by law has access to closed centres where migrants are accommodated, while NGOs are also usually granted access dependent on collaboration arrangements with the immigration office and the management of the centres in question. However, Myria’s resources do not allow the institution to monitor those centres regularly.¹¹⁷

In **Poland**, lack of funding was reported as a key barrier by the Helsinki Foundation for Human Rights (HFHR), despite its long-standing commitment, expertise and involvement in the monitoring of forced returns in accordance with EU standards on forced return monitoring. The organization volunteered four lawyers to participate in a mandatory training course in 2014 held for NGO representatives engaging in forced return monitoring. This training course was conducted by the Polish Border Guard Headquarters and provided information on the mode and principles of organizing forced returns, including safety precautions during operations, and was set as a pre-condition for NGO monitors to observe returns (with limitations on accessing documentation). The Polish Border Guard and NGOs also have jointly developed the policies and procedures used for monitoring.

However, in practice regular and robust monitoring has been impeded by the lack of funding for monitors’ expenses: within the existing arrangements, the travel costs of NGO representatives from the border to the airport or seaport of the country to which a person is returned to are covered from the state budget only if at least five people are returned at the same time on a vessel or a chartered aircraft. In other cases, the NGO is required to cover the costs of its representative’s participation in the return operation (i.e. to cover flight tickets and other travel expenses). Due to this funding gap, in the majority of cases, monitors are not able to observe return flights and are limited to pre-departure observations.¹¹⁸ In 2019, four returns were monitored, and between January and November 2020, only two.¹¹⁹

Nationally, the Polish Border Guard is responsible for co-ordinating all monitoring activities at the operational level; this however does not extend to funding. The Border Guard reported in December 2020 that inter-ministerial consultations were underway to appoint an independent body responsible for monitoring border procedures, but information on funding arrangements was not available.¹²⁰

Threats of criminalization for grass-roots initiatives

In recent years, individual volunteers and non-governmental organizations have reported attempts to prevent them from carrying out legitimate activities supporting migrants at borders and in-country. Threats of criminalization and other administrative harassment has been

¹¹⁷ Information obtained through e-mail exchanges on 10 and 17 November 2020. Another significant gap in the scope of independent monitoring is the lack of full access to all stages of the return procedure, in particular, arrest and detention in a police station.

¹¹⁸ Information obtained as part of a questionnaire response submitted on 8 November 2020.

¹¹⁹ Information obtained as part of e-mail interview with a representative of the Border Guard administered on 1 December 2020.

¹²⁰ *Ibid.*

documented along major migration routes in the Mediterranean Sea, where NGO rescue ships and crew have faced restrictions and retaliation, and also along land borders. Professional observers such as the Council of Europe Expert Council on NGO Law have recognised that the phenomenon of shrinking space for civil society has particularly affected refugee and migrant support organizations.¹²¹ Those taking on monitoring have also faced backlash in some instances and a number of organizations highlighted such cases during the consultation for this research.

In **Croatia**, the Border Violence Monitoring Network (BVMN) has recorded a continued threat of criminalization faced by its local partner organization ‘Are You Syrious’ due to the role they have played in reporting testimonies from migrants who alleged violent treatment by the police authorities.¹²² BVMN reports that ‘Are You Syrious’ has experienced a public defamation campaign and that staff and long-term volunteers have faced criminal proceedings, leading to financial burdens and concerns for their well-being.

Another Croatian NGO, the Centre for Peace Studies, has not taken part in official border monitoring activities due to a lack of mandate and financial constraints. However, as a human rights organization it has been researching rights violations at Croatian borders and regularly reports on the violent pushbacks allegedly perpetuated by Croatian border authorities. During the COVID-19 pandemic it recorded a significant growth in pushbacks. It also recorded an increase in prosecutions launched against people providing assistance to migrants on humanitarian grounds, despite the lack of specific legislation preventing actors from providing such support, which has negatively impacted individuals in a number of significant ways.¹²³

In **Serbia**, border monitoring by non-governmental organizations has not been formally authorized; co-operation between the state and non-governmental organizations depends entirely on the goodwill of authorities as there are no legal provisions guaranteeing civil society participation in this domain.¹²⁴ Still, police authorities have from time to time allowed for the presence of independent monitors, mostly foreign nationals, to collect testimonies and allegations of ill-treatment at the country’s western border with Croatia and northern border with Hungary. Recently however, an increase in intimidation and administrative harassment of such independent monitors, apparently for breaching registration and residency requirements, has been reported and a cause of concern for the non-governmental organizations publishing their reports.¹²⁵ Eight foreign nationals who were collecting testimonies and presenting

¹²¹ See: Expert Council on NGO Law of the Conference of INGOs, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States*, Thematic Study prepared by Dr Carla Ferstman, CONF/EXP(2019)1, 2019.

¹²² Information obtained as part of a questionnaire response submitted on 16 November 2020.

¹²³ Information obtained as part of a questionnaire response submitted on 12 November 2020.

¹²⁴ Information obtained as part of a questionnaire response submitted by Klikaktiv - Centre for Development of Social Policies on 5 November 2020.

¹²⁵ See [Border Violence Monitoring Network: Shrinking Spaces: Report on Criminalisation of Solidarity in the Western Balkans](#), 5 November 2020.

important evidence of neighbouring countries' border police abuses against migrants were reportedly expelled by the Serbian authorities in 2020.¹²⁶

In **Switzerland**, ACAT Suisse has been conducting indirect monitoring of cases of *refoulement* by the State Secretariat for Migration, and has supported individual cases with advocacy and interventions with authorities. However, the implementation of a new law on asylum in 2019 proved to be problematic, as this introduced accelerated procedures for a large number of asylum-seekers. Due to this change in the legal context, ACAT's ability to carry out effective monitoring and to support individuals has been affected. Still, together with other organizations it has challenged cases where the authorities have arguably failed to take necessary measures during an accelerated procedure, to properly address allegations brought by asylum-seekers, or have failed to take into consideration a vulnerable status or medical need. Following appeals at higher courts, the authority was compelled to reconsider several decisions. In this way, the organization has been able to somewhat mitigate the effects of *de facto* limited access to rights during an accelerated procedure, however it has faced the threat of criminalization for these interventions. By law, in Switzerland any person who helps irregular migrants, including asylum-seekers whose stay is irregular, faces criminal prosecution and the prospect of imprisonment, even if the assistance to a person in need has been purely humanitarian. While the so-called "délit de solidarité" (crime of solidarity) has been the target of international criticism, an initiative proposing to decriminalise such humanitarian support was rejected by parliament in March 2020.¹²⁷

5.4. Summary of findings

The current experiences of monitors gathered through the consultation undertaken for this research centre on a small number of key issues. An important precondition for successful independent monitoring is the existence of **a formalized relationship between law enforcement agencies and monitors**. In most cases highlighted during the consultation, organizations had developed and implemented monitoring activities as part of standardized procedures enabled either through legislation – on the functioning of ombuds institutions, the NPM framework, or inspectorates – or through written agreements, memoranda of understanding and service contracts setting out the parameters of co-operation case-by-case. In some cases, e.g. in those reported by organizations in the US, monitoring had initially been self-started, but had gradually become formalized and recognized as beneficial by the law enforcement agencies targeted. Where monitoring was not formally allowed, monitors faced prohibitive barriers in carrying out the full range of necessary activities, lacked access to locations and procedures critical to monitor, and faced additional pressure, and in a few cases, outright hostility by state actors. Respondents recognized the significant difficulties caused by an absence of co-operation.

¹²⁶ See [Radio Free Europe: Activist helping migrants in Sid arrested](#), 12 December 2020.

¹²⁷ Information obtained as part of a questionnaire response submitted on 13 November 2020.

Regarding the focus of monitoring either at borders or in the context of immigration detention and return, respondents reported **a variety of methodological approaches which aimed to observe and record a range of interactions between border police and migrants**. Where resources and agreements allowed, monitoring teams with diverse professional expertise were deployed to assess material conditions, the conduct of law enforcement, and the impact on people subjected to border or immigration enforcement. Adapting their approach to the reality of increased and mixed migration flows, many monitoring teams paid distinct attention to observing the administrative and legal compliance aspects of border asylum procedures, during screening, identification and referral. Monitoring return, including informal returns such as pushbacks and collective expulsions, presented additional challenges, as monitors were often unable to access the ‘first line’ at borders, and had to resort overwhelmingly to victim testimonies and third party information to corroborate allegations.

The accessibility of border police activity to monitors wishing to undertake assessments varied across the region. Monitors working within the NPM mandate did not report considerable restrictions on access, and were able to be present in detention and holding facilities, often for long periods of time, to carry out full inspections and interview all stakeholders. On the other hand, the consultation indicated that there is still reluctance from law enforcement to allow non-uniformed monitors access to border operations and areas. The NPM experience in some participating States, where the mandate has been jointly implemented with non-governmental actors, has shown that professionally organized monitoring can change such attitudes. It is encouraging that some respondents reported outreach efforts by agencies aiming to improve co-operation and relationships of trust with local and migrant communities.

Non-governmental organizations and ombuds institutions consulted for this research have all reported **the use of periodic and thematic reports as the primary outcome of monitoring**; the advocacy and preventive function of publishing such reports was common practice across the region. Some of the co-operating participating State agencies agreed to publish the reports on their own websites, including their responses to findings and recommendations. Such publication of reports increased recognition of monitoring as a legitimate activity, and the transparency and accountability of the agencies’ activities, including staff conduct.

6. Recommendations

Informed by the international human rights framework, and by the consultation undertaken with a range of stakeholders from the OSCE region, the following recommendations have been developed for OSCE participating States, and for non-state actors, covering the essential elements that enable the establishment and effective implementation of independent border police monitoring.

6.1. Ensure political support for monitoring and protection of human rights at borders

Participating States should provide political support for the establishment and implementation of independent border police monitoring at the national level. Non-governmental actors, including NHRIs, ombuds institutions and civil society should be politically supported to ensure that they can engage in such national mechanisms and should advocate for such political support.

Specifically, participating States should:

- Recognize that the context of border police operations carries a significant risk of human rights violations for migrants who are in a vulnerable situation, and that no law enforcement agency is immune to potential instances of abuse of power, excessive use of force, or systemic deficiencies;
- Commit to implement international obligations and OSCE commitments in all border operations, and to raise awareness of applicable standards among relevant agencies and personnel;
- Recognize that human rights monitoring at borders is a legitimate activity to document the occurrence of such instances and deficiencies, and carries the potential to remedy these through providing matter-of-fact observations and actionable recommendations;
- Include clear mechanisms to promote and fulfil the rights of victims of rights violations, including through accessible means to seek legal redress for the actions of participating State authorities in border procedures;
- Take positive action by mapping and facilitating opportunities for dialogue and formalising co-operation between law enforcement agencies and organizations engaged in human rights monitoring.

6.2. Ensure an enabling environment for monitoring

Given the obstacles faced by organizations and individual human rights monitors, participating States, in consultation with non-state actors, should:

- Take proactive steps to establish border monitoring mechanisms and engage civil society stakeholders in their development. Where monitoring mechanisms exist, participating States should periodically engage in review processes to ensure their efficiency;
- Ensure that laws and policies do not criminalize or prevent the legitimate activities of non-governmental organizations and individuals working to monitor and protect the rights of migrants, and that human rights defenders are not prosecuted under “facilitation” charges for carrying out such activities;
- Commit adequate resources to build monitoring capacity at the national level, and to fund associated costs, while upholding the functional independence of non-governmental monitors;
- Make use of expertise and resources in the OSCE and other international organizations, as well as monitoring bodies, to provide human rights training for law enforcement agencies, including training on specific standards related to migration and asylum.

6.3. Ensure the functional independence and efficiency of monitors

Participating State and non-state actors engaging in developing, supporting and implementing border police monitoring co-operation should:

- Extend monitoring to all border operations, including remote and unmanned border surveillance and management;
- Enable human rights monitors to access locations critical for monitoring, and to access information relevant to their work without excessive administrative burdens and unwarranted use of security classification;
- Strive to include in its scope the possibility to speak privately and confidentially with individuals targeted by border police operations, subject solely to their informed consent, free from risk of retribution and disadvantage;
- Work together to ensure that monitors are able to develop and access specific expertise relevant for the border context, including expertise required to monitor the human rights of people in situations of vulnerability in an age-, diversity- and gender-sensitive manner, and to recognize medical and other specialised protection needs;
- Develop and implement complaint and reparation procedures that provide effective access to justice and redress to migrants for human rights violations and abuses reported and documented as a result of monitoring border police operations;
- Agree on clear pathways to follow-up on reports and recommendations made by monitors in a timely manner, bearing in mind the primary obligation to respect the rights of those targeted by policing;

- Ensure that co-operation is not hindered by unnecessary restrictions on monitoring, beyond safety and security measures genuinely required in specific border contexts.

6.4. Promote co-operation and capacity building for border police monitoring internationally

Participating States, international organizations, international monitoring bodies, national institutions and non-governmental organizations involved in monitoring should support the sharing of good practices and know-how in the OSCE region.

Participating States, international organizations and non-state national actors should:

- Allocate resources to capture national experiences and knowledge arising from the development and implementation of monitoring activities, and proactively share them at appropriate forums, including those of the OSCE;
- Support mutual co-operation among national actors to use such experience from monitoring to inform capacity building both for law enforcement agencies and other competent authorities and for civil society;
- Seek cross-border, regional and international co-operation opportunities to develop and promote robust and well-functioning models of monitoring co-operation;
- Provide funding and capacity-building opportunities for stakeholders across the OSCE region to increase awareness of principles and guidelines on monitoring human rights at borders, as well as on safety and security while carrying out such activities.

7. Conclusion

Border policing in the context of irregular migration is a specialised area of law enforcement that is most often executed in remote areas, outside of the public's view, yet how it is implemented carries implications for societies as a whole. The enforcement of laws and policies related to border governance, immigration and asylum cannot take place at the expense of obligations that guarantee basic human rights for anyone who comes under the jurisdiction of the state and is targeted by border police operations.

Migration trends, including irregular movements across borders, are diverse within the OSCE region; the variation in occurrence of allegations of violations in the context of border policing reflects this disparity. However, no law enforcement agency is inherently immune to potential instances of abuse of power, or to potential systemic deficiencies, such as persistent prejudices, an entrenched tolerance for the use of force, or a culture of impunity.

The outbreak of the COVID-19 pandemic in early 2020 has added to concerns for the well-being of migrants, as many borders were shut and detention and reports of pushback of irregular migrants increased.

Protection of the rights to life, to liberty and security, to non-discrimination and to freedom from torture and cruel, inhuman or degrading treatment and punishment must be guaranteed at all times, regardless of a person's nationality, legal status or ability to claim those rights.

Participating States are required to take proactive steps to ensure these rights are protected through applying a range of procedural and practical safeguards. Initiating co-operation with independent human rights monitors at borders is a practical step that participating States can take to increase the transparency and accountability of law enforcement agencies.

For monitoring co-operation to be efficient and sustainable, participating States should work to address legitimate concerns in relation to their political and policy environments which can impose barriers that impede civil society from carrying out such work freely, independently and without prohibitive restrictions, such as legal obstacles, unwarranted public order and security measures, or excessive administrative requirements. Where human rights defenders have faced criminal prosecution, instances of intimidation and harassment, or smear campaigns for their work, actions to create an enabling and safe environment for them to operate in should be taken without delay, and access to compensation and legal redress should be considered.

This review of international human rights law and consultation with border agencies and civil society monitors across the OSCE region concludes that existing legislation and practical guidelines developed by authoritative international organizations provide a solid knowledge base for the development of methodologically robust and functionally independent border police monitoring mechanisms. It also concludes that independent national institutions, such as

ombuds institutions and National Human Rights Institutions, as well as non-governmental organizations, are often already equipped with relevant know-how, tools and experience that enable them to extend their monitoring to critical border areas. A lack of political support and enabling environments are identified as the main barriers to extending such monitoring efforts.

Regular and systematic monitoring to provide an independent oversight mechanism needs to be equipped with necessary permissions and adequate resources. Monitors should be granted permits and powers to access all areas of border police deployment, and relevant non-classified information; they should be enabled to communicate with law enforcement agents as well as people targeted by border policing, and be able to make first-hand observations in the spirit of co-operation, without undue restrictions or threats of retaliation to their person or to the organization they represent. The resources necessary to ensure that such co-operation is sustainable and accessible for non-governmental organizations and experts with limited funds should be made available.

States have an opportunity to facilitate the development of co-operative arrangements between law enforcement agencies and independent monitoring actors, and to provide political support and resources to ensure that the parameters of co-operation render the activity meaningful and truly independent. The scope of monitoring should not be limited, and its findings should carry weight, with the potential to engage formal accountability procedures, including access to legal redress and compensation for victims, and the revision of policies and practices that are cause for specific human rights concerns.

Annex I – Standards on efficient and independent monitoring, and guidance drawn from monitoring places of detention

The UN Office of the High Commissioner for Human Rights has provided guidance to National Preventive Mechanisms and states on key criteria which need to be met to ensure the effective functioning of torture prevention bodies.¹²⁸ Institutions and non-governmental organizations seeking to set up border police monitoring arrangements should strive to adhere to similar criteria to guarantee their functional independence and powers to act.

Key criteria for efficient monitoring

- independence (mandated, operational, financial);
- expert and independent members;
- effective and continuously re-assessed strategy;
- fulfilment of key functions.

Minimum powers checklist

- the power to freely select the places of deprivation of liberty in which the visits are to be carried out;
- the power to regularly examine the treatment of persons deprived of their liberty in those places;
- the power to select the timing of such visits and determine whether they are to be announced or unannounced;
- the power to choose the persons to be interviewed;
- access to all information, including personal and sensitive information, premises and persons necessary for pursuing the mandate;
- the power to make recommendations to the relevant authorities and other addressees;
- the power to submit proposals and observations concerning existing or draft legislation [...].

Source: OHCHR, *Preventing torture, The Role of National Preventive Mechanisms, A Practical Guide*, 2018.

UNHCR has also developed guidance specifically for monitoring detention which defines key areas for monitoring to assess.

Monitoring should assess:

- the legal and administrative framework applicable to detention, access of detainees to detention review procedures, courts of law, lawyers and/or alternatives to detention;
- access of detainees to asylum and immigration procedures in detention;
- access of detainees to UNHCR and other international or non-governmental organizations, or to consular assistance, if sought;

¹²⁸ OHCHR, *Preventing torture, The Role of National Preventive Mechanisms, A Practical Guide*, 2018.

- practical measures set and applied with a view to protecting the detainee (guaranteeing the rights to life and physical and psychological integrity);
- the living conditions during detention (ensuring dignified and humane treatment);
- the regime of detention (activities, contact with the outside world);
- access to medical care and other specific services (taking into account the particular needs of persons in situations of vulnerability or particularly at risk);
- the organization and handling of persons deprived of their liberty by the detaining authorities and public or private officials assigned to these tasks;
- the provision of information on the rights and duties of detainees, including effective complaints procedures;
- the treatment of vulnerable persons or those at particular risk.

Source: UNHCR, *Policy on detention monitoring*, 2015.

The Parliamentary Assembly of the Council of Europe (PACE) and the Association for the Prevention of Torture (APT) have also issued guidance on visiting immigration detention centres, with additional aspects and considerations regarding the treatment of detainees and interaction with staff. The expansion of the use of detention in the course of asylum and migration management warrants increased attention by monitoring teams.

Checklist for visiting immigration detention centres:

- material conditions;
- access to the outside world and activities;
- protection measures (access to asylum procedure, UNHCR, legal aid, consular services, complaints);
- procedural and legal safeguards (interpretation, legal aid, right to challenge detention and apply for release);
- treatment (allegations of torture, use of force, means of restraint, solitary confinement, incidents, self-harm, hunger strikes, transport, *refoulement*, deportation measures);
- health care (including mental health care, specialised health care);
- treatment of and provisions for vulnerable groups;
- personnel (attitudes, training, awareness, qualifications, staffing levels, equipment, salary).

Source: Parliamentary Assembly of the Council of Europe and APT, *Visiting immigration detention centres: A guide for parliamentarians*, 2013.¹²⁹

On the basis of its own experience, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has developed criteria for new

¹²⁹ For a more detailed list, see: PACE and APT, *Visiting immigration detention centres: A guide for parliamentarians*, Annex 1, pp. 57-60.

monitoring mechanisms with the aim of helping to ensure such mechanisms can function efficiently and independently in a border context.

CPT criteria for independent and effective monitoring

Monitoring mechanisms should have a mandate to:

- conduct unannounced inspections of law enforcement establishments and have access to all files, registers and video recordings in respect of all categories of migrants “diverted” and “intercepted” by law enforcement agencies;
- inspect all relevant documentation (including shift handover logbooks, shift distribution charts and shift reports) of law enforcement patrols, as well as access to all recordings of stationary and mobile video and motion-detecting devices at borders;
- be present as an independent observer during “diversion” and “interception” operations at the border;
- liaise with international organisations and other stakeholders operating on external sides of borders in order to collect real-time information on possible cases of malpractices during prevention of entry, interception, and removal.

In order to safeguard their independence, monitoring mechanisms should be:

- free from any institutional connection with the ministry or other authorities responsible for border policing;
- adequately staffed by appropriately qualified staff, including medical professionals, and provided with the necessary financial resources;
- empowered to produce periodic and ad hoc visit reports with clear recommendations to the competent authorities and to report on the implementation of those recommendations;
- entitled to communicate directly with the competent prosecutorial authorities in the event that malpractice is uncovered in the course of its monitoring activities and to secure rapid access to forensic medical examinations for alleged victims of ill-treatment.

Source: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *30th General Report of the CPT*, Strasbourg, May 2021.

Bibliography

International treaties and conventions

Universal Declaration of Human Rights, 1948

Convention Relating to the Status of Refugees, 1951

Protocol Relating to the Status of Refugees, 1967

International Covenant on Civil and Political Rights, 1966

Convention on the Law of the Sea, 1982

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

International Convention on maritime search and rescue, 1979

Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2002

Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 1950

European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment, 1987

Charter of Fundamental Rights of the European Union, 2012

United Nations documents

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), 11 August 2000.

UN General Assembly, *Principles relating to the Status of National Institutions (The Paris Principles)*, Adopted by General Assembly resolution 48/134 of 20 December 1993.

—, *Migrant children and adolescents, Resolution adopted by the General Assembly on 18 December 2014*, A/RES/69/187.

—, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Resolution A/RES/70/175, 17 December 2015.

—, *Interim Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/70/303, 2015.

—, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/72/178, 2017.

UN Human Rights Committee, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001.

UN International Organization for Migration, *Thousands of Migrants Forced to Sleep Rough after Closure, Destruction of Bosnia Camp*, 23 December 2020.

UN Secretary-General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, 2014.

United Nations High Commissioner for Refugees (UNHCR), Executive Committee of the High Commissioner's Programme, *Detention of Refugees and Asylum-Seekers No. 44 (XXXVII) - 1986*, 13 October 1986.

—, *Detention guidelines: Guidelines on the applicable criteria and standards relating to the detention of asylum seekers and alternatives to detention*, 2012.

—, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, 2017.

UNHCR and Association for the Prevention of Torture (APT), *Monitoring immigration detention: practical manual*, 2014.

UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights at International Borders*, October 2014.

—, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, HR/P/PT/8/Rev.1, 2004.

—, *Preventing torture, The Role of National Preventive Mechanisms*, A Practical Guide, 2018.

—, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations*, 2017.

—, *In Search of Dignity, Report on the human rights of migrants at Europe's borders*, 2017.

—, *Training Manual on Human Rights Monitoring*, 2014.

UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018.

World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, Interim guidance, 15 March 2020.

OSCE documents

Border Security and Management Concept: Framework for Co-operation by the OSCE Participating States, Ljubljana, 6 December 2005.

Charter for European Security (Istanbul Document), 1999.

Guidebook on Democratic Policing by the Senior Police Adviser to the OSCE Secretary General, Vienna, May 2008.

Strategy to Address Threats to Security and Stability in the Twenty-First Century, 2003.

ODIHR and APT, *Guidance – Monitoring Places of Detention through the COVID-19 Pandemic*, 2020.

ODIHR and Penal Reform International, *Guidance Document on the Nelson Mandela Rules*, 2018.

ODIHR, *Guidelines on the Protection of Human Rights Defenders*, 2014.

—, *OSCE Commitments relating to Migration and Integration*, May 2005.

—, *OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, Warsaw, 2012.

—, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, 2020.

—, *Overcrowded shelters put migrants at unacceptable risk amidst pandemic, OSCE human rights head says*, Warsaw, 4 May 2020.

—, *Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring*, A Guidance Note for Oversight Mechanisms, January 2021, <https://www.osce.org/monitoring-SGBV-in-detention>.

Herbert Salber, Alice Ackermann, “The OSCE’s Comprehensive Approach to Border Security and Management”, IFSH (ed.), *OSCE Yearbook 2009*, Baden-Baden 2010, pp. 289-301.

Council of Europe documents

Committee of Ministers, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*, adopted on 11 January 2006, revised and amended on 1 July 2020.

—, *Recommendation No. R(98)15 of the Committee of Ministers to member States on the training of officials who first come into contact with asylum seekers, in particular at border points*, adopted on 15 December 1998.

—, *Twenty Guidelines on Forced Return*, September 2005.

Commissioner for Human Rights, *Opinion of the Commissioner concerning independent and effective determination of complaints against the police*, CommDH(2009)4, 2009.

—, *Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean*. Recommendation, June 2019.

Council of Europe, *Visiting immigration detention centres: A guide for parliamentarians*, 2013.

—, *Visiting places where children are deprived of their liberty as a result of immigration procedures, Guide for parliamentarians*, 2017.

- , *Promoting child-friendly approaches in the area of migration. Standards, guidance and current practices*, 2019.
 - , *Gender-based asylum claims and non-refoulement: Article 60 and 61 of the Istanbul Convention*. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2019.
 - , *Factsheet on protecting the rights of migrant, refugee and asylum-seeking women and girls*, 2019.
 - , *Refugee and migrant children in Europe – Final report on the implementation of the Action Plan (2017-2019)*, Information Documents, SG/Inf(2020)4, 2020.
- European Committee on Crime Problems, *Council of Europe Action Plan on Fostering International Co-operation and Investigative Strategies in Fighting the Smuggling of Migrants*, 2020.
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Safeguards for irregular migrants deprived of their liberty*, Extract from the 19th General Report of the CPT, 2009.
- , *Factsheet on immigration detention*, 2017.
 - , [Report on the 2017 ad hoc visit of the CPT to Hungary](#), September 2018.
 - , [Report on the 2020 ad hoc visit of the CPT to Greece, November 2020](#).
 - , *30th General Report of the CPT*, May 2021.
- European Commission against Racism and Intolerance, *General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination*, CRI(2016)16, Adopted on 16 March 2016.
- European Court of Human Rights (ECtHR), *Factsheet: Extra-territorial jurisdiction of States Parties to the European Convention on Human Rights*, July 2018.
- , *Factsheet: Migrants in detention, November 2019*.
 - , *Factsheet: Collective expulsion of aliens*, July 2020.
 - , *M.K. and others v. Poland*, Applications nos. 40503/17, 42902/17 and 43643/17, 23 July 2020.
 - , *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011.
- Expert Council on NGO Law of the Conference of INGOs, *Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States*, Thematic Study prepared by Dr Carla Ferstman, CONF/EXP(2019)1, 2019.
- Group of Experts against Trafficking in Human Beings (GRETA), *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation*, September 2020.

Parliamentary Assembly of the Council of Europe, *Lives lost in the Mediterranean Sea: who is responsible?*, Report by the Committee on Migration, Refugees and Displaced Persons, 2012.

—, *Pushback policies and practice in Council of Europe member States*, Report by the Committee on Migration, Refugees and Displaced Persons, 2019.

European Union documents

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 2013.

Directorate General for Internal Policies of the Union, Policy Department for Citizens' Rights and Constitutional Affairs, *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update*, December 2018.

Directorate General for Internal Policies of the Union, Policy Department B: Structural and Cohesion Policies, *Jurisdictional Waters in the Mediterranean and Black Seas*, December 2009.

European Asylum Support Office (EASO), *Asylum procedures and the principle of non-refoulement – Judicial Analysis*, 2018.

—, *Asylum procedures and the principle of non-refoulement*, 2018.

—, *Border Procedures for Asylum Applications in EU+ Countries*, 2020.

European Commission, *Annex to the Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks*, C(2017) 6505, 2017.

—, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders, and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, 23 September 2020.

—, *Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, 23 September 2020.

European Ombudsman, *Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex*, November 2013.

European Union Agency for Fundamental Rights (FRA), *Border controls and fundamental rights at external borders, Practical guidance*, Luxembourg, 2020.

—, *Forced return monitoring systems – 2019 update*, 27 June 2019.

—, *Forced return monitoring systems – 2020 update*, 3 July 2020.

- , *Fundamental rights at land borders: findings from selected European Union border crossing points*, 2014.
 - , *Fundamental rights at Europe's southern sea borders*, 2013.
 - , *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, 2016.
 - , *The revised European Border and Coast Guard Regulation and its fundamental rights implications*, Vienna, 27 November 2018.
 - , *Migration: Fundamental rights issues at land borders*, 2020.
- FRA and CoE, *Fundamental rights of refugees, asylum applicants and migrants at the European borders*, 2020.
- FRA and ECtHR, *Handbook on European law relating to asylum, borders and immigration*, 2014.
- European Border and Coast Guard Agency (Frontex), *Frontex Fundamental Rights Strategy*, 2011.
- , *Fundamental Rights Training for Border Guards – Trainer's Manual*, Warsaw, 2013.
 - , *The Agency's Rules on the Complaints Mechanism (Annex 1)*, 2016.
 - , *Code of Conduct for Return Operations and Return Interventions Co-ordinated or Organised by Frontex*, 2018.
 - , *Code of Conduct Applicable to All Persons Participating in Frontex Operational Activities*, 2019.
 - , *Technical and Operational Strategy for European Integrated Border Management*, Warsaw, May 2019.
- Frontex/Consultative Forum on Human Rights, *Fifth Annual Report (2017)*, Warsaw, 2018.
- , *Sixth Annual Report (2018)*, Warsaw, 2019.
 - , *Seventh Annual Report (2019)*, Warsaw, 2020.
- Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 [Frontex Regulation], 2019.

Reports, guidance and statements from nongovernmental organizations

- Amnesty International, *Monitoring and Investigating Equipment used in Human Rights Abuses. A handbook on monitoring and investigating MSP equipment*, 2005.
- , *Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 2015.
 - , *Combatting Torture and Other Ill-treatment: A Manual for Action*, 2016.
 - , *The Human Rights Risks of External Migration Policies*, POL 30/6200/2017, 2017.

- , *USA: 'You don't have any rights here', Illegal pushbacks, arbitrary detention & ill-treatment of asylum-seekers in the United States*, 2018.
- , *Punishing compassion – Solidarity on trial in Fortress Europe*, EUR01/1828/2020, London, 2020.
- Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *At the border; Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, Warsaw 2016.
- Association for the Prevention of Torture (APT), *Monitoring Police Custody: A Practical Guide*, 2013.
- , *Monitoring immigration detention: A practical manual*, 2014.
- APT and Penal Reform International, *Instruments of Restraint: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, 2015.
- Border Network for Human Rights, *The State of Human Rights at the US-Mexico Border*, June 2019.
- Border Violence Monitoring Network, *Special Report: COVID-19 and border violence along the Balkan Route*, May 2020.
- , *Shrinking Spaces: Report on Criminalisation of Solidarity in the Western Balkans*, November 2020.
- , *The Black Book of Pushbacks*, December 2020.
- Canadian Red Cross Society: *Immigration Detention Monitoring Program Annual Monitoring Activity Report*, September 2017 to March 2018.
- Caritas Albania, *Caritas at the border: Caritas Albania's work with migrants*, 15 October 2019.
- Centre for European Policy Studies (CEPS), S. Carrera and M. Stefan: *Complaint Mechanisms in Border Management and Expulsion Operations in Europe*, 2018.
- Defence for Children International-Belgium, *Practical guide: monitoring places where children are deprived of their liberty*, 2016.
- European Council on Refugees and Exiles (ECRE), *The Role of EASO Operations in National Asylum Systems*, 2019.
- , *COVID-19 measures related to asylum and migration across Europe*, 28 May 2020.
- ECRE et al., *Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability*, 10 November 2020.
- European Network of National Human Rights Institutions (ENNHRI), *Protecting human rights of migrants at the borders. Evidence and work of European National Human Rights Institutions*, 2019.
- European Policy Centre, *Diminishing safeguards, increasing returns: Non-refoulement gaps in the EU return and readmission system*, 2019.

- Helsinki Foundation for Human Rights, *Human Rights Monitoring*, Warsaw 2001.
- Human Constanta, *Invisible Refugees on Belarus-Poland Border. Primary assessment of local migration crisis in Brest-Terespol sector*, September 2016.
- , *Report on the situation with transit refugees on the Belarusian-Polish border (January – March 2020)*, April 2020.
- Human Rights Watch, *Poland: Asylum Seekers Blocked at Border*, March 2017.
- , *Greece: Lead Poisoning Concerns in New Migrant Camp*, 8 December 2020.
- International Centre for Migration Policy Development (ICMPD), *Framework for a European Pool of Forced Return Monitors*, Vienna, 2015.
- , *Guidelines and Monitoring Tools for Forced Return Monitoring*, Vienna, 2015.
- , *Training Manual – Forced Return Monitoring*, Vienna, 2015.
- International Commission of Jurists, *Migration and International Human Rights Law, Practitioners Guide No.6*, Revised Edition, Geneva, 2014.
- International Committee of the Red Cross, *International rules and standards for policing*, 2015.
- International Detention Coalition, *Children in Immigration Detention*, Position Paper, 2009.
- , *There are alternatives, A handbook for preventing unnecessary immigration detention*, revised edition, 2015.
- Meijers Committee (Standing committee of experts on international immigration, refugee and criminal law), *Comments on the draft for a new Regulation on a European Border and Coast Guard, (COM(2018) 631 final) and the amended proposal for a Regulation on a European Union Asylum Agency (COM(2018) 633 final)*, 27 November 2018.
- Médecins Sans Frontières, *Obstacle course to Europe, A policy-made humanitarian crisis at EU borders*, 2016.
- Omega Research Foundation, *Briefing Paper: Use of Tools of Torture in OSCE participating States*, 2017.
- Omega Research Foundation and University of Exeter, *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors*, 2018.
- Parliamentary Ombudsman of Finland, *National Preventive Mechanism against Torture: Summary of the Annual Report*, 2019.
- Peace Institute, *Border Monitoring Methodologies: Stakeholders' Manual for Establishing a Border Monitoring Mechanism*, edited by mag. Neža Kogovšek, LL.M. Peace Institute, Ljubljana, November 2006.
- Penal Reform International, *Coronavirus: healthcare and human rights of people in prison*, 2020.

Platform for International Co-operation on Undocumented Migrants (PICUM) and Statewatch, *Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status*, 2019.

Refugee Rights Europe & End Pushbacks Partnership, *Pushbacks and rights violations at Europe's borders, The state of play in 2020*, November 2020.

Separated Children in Europe Programme (International Save the Children Alliance, UNHCR, UNICEF), *Statement of Good Practice*, 4th revised edition, 2009.

The Greek Ombudsman, *Return of Third Country Nationals. Special Report*, 2019.

Transnational Institute, *The shrinking space for solidarity with migrants and refugees: how the European Union and Member States target and criminalize defenders of the rights of people on the move*, Amsterdam, September 2018.

Academic papers

Cathryn Costello and Itamar Mann, "Border Justice: Migration and Accountability for Human Rights Violations", *German Law Journal*, Vol. 21, 2020, pp. 311-334.

Matteo Tondini, "The legality of intercepting boat people under search and rescue and border control operations", *The Journal of International Maritime Law*, Vol. 18, 2012, pp. 59-74.

Melanie Fink, "The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable", *German Law Journal*, Vol. 21, 2020, pp. 532-548.

Polly Pallister-Wilkins, "The Humanitarian Politics of European Border Policing: Frontex and Border Police in Evros", *International Political Sociology*, Vol. 9, Issue 1, March 2015, pp. 53-69.

Walter Kälin, "Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and beyond", *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003, Chapter 10.1.