

Effective border monitoring mechanisms in the EU context RCEU Briefing paper

Recent tragic incidents well illustrate the current humanitarian challenges along the external borders of EU Member States. They also point to the need for increased oversight by independent actors of not just the effective access by migrants to relevant rights and services, but also of legal and administrative procedures taking place at borders and of the related activities of law enforcement officials.

Border monitoring by independent bodies or organisations is considered essential to support compliance with fundamental rights at borders. Border monitoring also improves access to the territory and to procedures for migrants, and helps countries to improve their treatment of migrants at borders. The scope, nature and challenges of such a border monitoring mechanism must be further explored to ensure that it is effective. This was just the focus of a 2014 workshop involving European Red Cross national societies and humanitarian actors with expertise in this matter.¹

EU National Societies have significant experience in implementing border related activities, including monitoring. Yet as this workshop showed there is scope for increasing the role of EU National Societies to ensure that the rights of migrants are respected at all border controls.

1. Overview of the EU context on borders

The progressive transfer of competence for Member States' border policies to the EU itself since the establishment of the border free Schengen area in 1985 has led to increased resources and capacities being allocated to border control operations at external EU borders. This operational and legislative cooperation has not only resulted in a clearer legislative framework but also stricter conditions for entering the Schengen area under more complex border control operations.² The use of technology is also growing. Joint operations involving different border authorities, coordinated by the EU agency FRONTEX³ but hosted by a Member State are not uncommon. These involve personnel from different Member States, which tends to complicate accountability and identification of those responsible for violations that may occur during these operations.

Beyond the security checks intended by border operations, other measures with significant impact on the individual are increasingly being implemented by border management authorities. These include (i) screening mechanisms to identify individuals who may be in need of international protection and/or have special needs (ii) debriefing (interviewing) to gather

¹ PERCO [Border Workshop minutes](#), April 2014.

² The Schengen borders code (OJ L 105, 13.4.2006) regulates border crossings across the Schengen area.

³ The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

intelligence on smuggling networks and migratory routes and (iii) referrals of those in need of adequate services and procedures.

In practice, we are observing an acceleration of procedures at external Schengen area borders, such as the implementation of safe third country clauses and readmission agreements. These facilitate the return of migrants to their country of origin or of transit on their way to the EU and tend to expedite procedures at borders. Detention at borders is also increasing. All this means that effective access to essential services, including asylum information and procedures, basic healthcare and legal aid, is often complicated in practice.

2. Vulnerabilities and risks at borders

Despite the safeguards embedded in international human rights law and other relevant standards such as EU legislation, there are significant gaps in the promotion and protection of the human rights of migrants at international borders.⁴ Refoulement, deprivation of liberty, punishment for unauthorised entry or presence, limited access to procedures, procedural requirements, counselling and absence of specific health care support, arbitrary returns and death are among the most frequent violations resulting from inadequate border practices. Current European migration and border management practices are thus affecting migrant vulnerability, with migrants resorting to ever more dangerous routes and means in order to reach the EU. The externalisation of border management policies has also led to greater pressure on non-EU countries to control, retain, and readmit migrants, which has a significant impact on the living conditions and safety of migrants in transit countries, and on their right to leave their country and to seek asylum.⁵

In addition to the inherent vulnerability of migrants at borders that gives rise to a need for humanitarian assistance, the specific needs of certain groups demand dedicated procedures. These include children, women, survivors of violence and/or torture or trauma, people with physical or mental disabilities, and elderly migrants. There should be specific mechanisms to identify and protect these groups at all stages of border control, some of which are listed below:⁶

- Asylum seekers and refugees: effective access to the territory and to refugee status determination procedures in a timely manner;⁷
- Children and unaccompanied minors: child-sensitive communication. systematic consideration of the best interest of the child and timely appointment of an independent guardian/representative;⁸

⁴ OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#).

⁵ RCEU (2013), [Shifting borders. Externalising migrant vulnerabilities and rights?](#), 6 November 2013.

⁶ UNHCR, [10-Point Plan of Action for refugee protection and mixed migration](#), 2007.

⁷ The Geneva Convention, EU directive on reception conditions and asylum procedures, art. 18 of the Charter of fundamental rights of the European Union.

⁸ Convention on the rights of the child

- Victims of trafficking: identification and swift referral to adequate protection services, access to asylum procedures and other protection schemes;⁹
- Victims of torture: timely identification and orientation to facilitate care and treatment, and adapted procedures including interview precautions.¹⁰

3. Scope of monitoring activities

International and European legal frameworks have created State duties and obligations at borders. However, given the intersection of jurisdictions and the often remote locations of border controls, it is a key challenge to ensure respect for human rights and correct border procedures in accordance with the law. Independent monitoring on both sides of the border and the establishment of complaints mechanisms are therefore essential to uphold fundamental rights.

Border monitoring is an organized and systematic activity with the purpose of observing and documenting procedures for migrants at borders, and of verifying other border facilities (police stations, waiting facilities, reception and detention centres, etc). The objective of monitoring is to identify the challenges faced by migrants, and through regular dialogue with stakeholders and the presence of monitors to deter any situations of concern from reoccurring and to enhance access and quality of border control procedures. The ultimate aim is to bring about change in border practices. Border monitoring mechanisms can include a range of activities¹¹:

- Regular and/or unannounced visits for the purpose of data collection;
- Training of border management authorities and personnel;
- Setting up of information points;
- Legal counselling and support so that legal procedures can be launched;
- Documenting of shortcomings and human rights violations, reporting, and making suggestions and recommendations;
- Advocacy and constant dialogue with local and central authorities.

In order to adequately fulfil their role, border monitors must be independent. Their roles and responsibilities must be clarified from the outset and accepted by all parties involved. This may require a proper, formalised framework within which border monitoring activities are authorised by national authorities. In order to be credible, there should be regular and systematic monitoring at all locations where border controls take place. Ideally, all measures to intercept migrants, including visa procedures and the prevention of people from departing (non-EU) transit and origin third (non-EU) countries should also be monitored. Monitors must be easily

⁹ UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.

¹⁰ OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1 and IRCT, *Recognising Victims of Torture in National Asylum Procedures: A comparative overview of early identification of victims and their access to medico-legal reports in asylum-receiving countries*, 2013.

¹¹ Border monitoring methodologies - Stakeholders' Manual for Establishing a Border Monitoring Mechanism, edited by mag. Neža Kogovšek, LL.M. Peace Institute, Slovenia November 2006

identifiable, their role explained to migrants and be clearly distinguishable from that of border management authorities.

By way of example, the UNHCR has established border management projects in different countries so as to ensure that all asylum-seekers have access to safe territory and fair and efficient asylum procedures in the EU¹². These projects are based on tripartite agreements between the corresponding government authorities, NGOs and UNHCR. Project partners regularly visit border crossing points and detention centres to evaluate the access of asylum-seekers to territory and asylum procedures. The projects also include training of border police and NGOs. In addition, several hundred information points in various languages have been placed at key locations along the external borders to inform new arrivals of their right to seek asylum, and listing local contacts for legal advice.

One of the key features of border monitoring activities is the short length of time migrants are at borders, compared to the multiple needs and violations they may face. To a greater extent procedures at borders tend to be characterised by quick removal, thus jeopardising human rights and safeguards. In addition, access to migrants is complicated when border control operations take place in remote and isolated areas, as is increasingly the case. Furthermore, the previously referred to tripartite agreements usually relate to asylum-seekers, so that monitoring the situation of other groups of migrants not identified as asylum seekers by border authorities can be difficult. Finally, in the case of joint border operations involving authorities from different countries, it may be difficult to identify who is in charge of the operation and ultimately responsible for possible violations suffered by migrants.

4. Red Cross experience and position on border monitoring related activities

With Resolution n°3 adopted at the 31st International Conference of the International Red Cross and Red Crescent Movement, countries have committed to ensuring that national procedures at international borders include adequate safeguards to protect the dignity, safety and access to relevant services of all migrants. Within the EU context, the [RCEU position paper on legal avenues to access international protection in the EU](#),¹³ puts forward nine recommendations to avoid human suffering and deaths along EU borders, including the setting up of independent border monitoring mechanisms along those borders and at all other places where EU border control measures are implemented, as well as at migrant reception and detention facilities. This should be carried out by independent and impartial actors, and monitoring reports made public and regularly submitted to the European Parliament, subject to confidentiality clauses.

In the [EU National Red Cross Societies response](#) to the European Ombudsman's public consultation on FRONTEX and Fundamental Rights,¹⁴ we stressed the need for FRONTEX to

¹² See for instance UNHCR Regional Representation for Central Europe Border Management and Protection of Refugees, Framework, <http://www.unhcrcentraleurope.org/en/what-we-do/monitoring-the-border/border-management.html>

¹³ RCEU, [Legal Avenues to Access International Protection in the EU](#), 27.02.2013

¹⁴ RCEU, [Comments on the enquiry concerning Frontex](#), 28.09.2012

respect the right of access to international protection. We further developed the monitoring recommendation in relation to FRONTEX activities by highlighting that *independent and effective monitoring and reviews needed to be set up*. Additionally, a transparent complaint mechanism should be put in place involving external watchdogs such as the European Parliament. Finally we consider that an *effective complaint mechanism* would require that FRONTEX delivers a deportation order to returned persons specifying existing remedy mechanism to challenge the decision.

Several National Societies are operationally active at sea, land and air borders to look after the needs of migrants, whether just arrived or returning. They undertake a wide range of activities, including monitoring, as follows:

- *Spanish Red Cross - The identification and referral of vulnerable groups at land and sea borders and in detention.*

The Spanish Red Cross is providing various services - humanitarian, health care and legal assistance, interpretation and integration activities - depending on the centres where migrants are received. It also provides emergency assistance when migrants arrive, but relies on the authorities to call when migrants are crossing. The Spanish Red Cross additionally organises the transfer of migrants from enclaves to the mainland, when the Ministry of Interior and Ministry of Labour authorize their transfer, and advocates the transfer of migrants who are in a particularly vulnerable situation (women and children, victims of trafficking in human beings, etc.). It collaborates with Spanish NGOs based in Morocco in order to raise awareness of trafficking in human beings and to identify victims or persons at risk.

The Spanish Red Cross adapts its border monitoring activities at the various borders. Initially primary emergency care and monitoring was conducted on the southern coast of Spain, as well as in Ceuta and Melilla. However, assistance is now also provided at the transit zone of Madrid and Barcelona airports, as well as in some detention centres. This includes receiving and assisting asylum seekers, and identifying vulnerabilities and any victims of trafficking. The Spanish Red Cross also engages in communication and advocacy with police officials, local and national prosecutors and other authorities. It also conducts training of first line responders, including social services, on identification of victims of trafficking and response to trafficking and other specific vulnerabilities.

- *Italian Red Cross - the Praesidium project*

Since 2006 the Italian Red Cross has been implementing the Praesidium project in collaboration with IOM and UNHCR. The goals of the project are to enhance reception conditions and humanitarian assistance given to migrants who arrive by sea via the southern border, and to improve reception standards for migrants landing on the islands of Lampedusa and Sicily, and other coastal areas in southern Italy. Save the Children Italy has been part of the project since February 2008 to respond to the increasing numbers of unaccompanied migrant children.

Within the Praesidium project, the Italian Red Cross focuses on the provision of social and medical assistance and tracing services, and aims to monitor reception and assistance conditions, with a particular focus on health-related and psychological aspects. The Italian Red Cross has also been providing information, education, health risk prevention initiatives and psychological support for migrant populations, with particular attention to vulnerable groups. This includes the publication of four brochures (in six languages) on first aid, pregnancy, hygiene and health, access to health care. Brochures were also developed for operators and first line responders with a view to raising awareness and disseminating good practices.

- *Lithuanian Red Cross – border monitoring project*

In collaboration with the UNHCR, the Lithuanian Red Cross carries out border monitoring activities both at land and air borders, and in the Lithuanian “Foreigners’ registration centre” which are both asylum and detention premises. Border guards contact the Red Cross when a person arrives at the border seeking asylum. It also monitors the implementation of procedural guarantees during interviews, in particular making sure that asylum seekers have access to information and proper interpretation services. The Lithuanian Red Cross also conducts awareness raising and training activities for border guards.

- *The Swiss Red Cross – Presence at Zurich airport*

Since 2001 the Swiss Red Cross cantonal branch in Zurich has been providing, social, legal and return counselling in the transit area of Zurich airport to all persons who have not been allowed to enter Swiss territory. A lawyer, a social worker and professional interpreters are available to respond to the needs of migrants.

- *The French Red Cross permanent desk in the transit zone of Roissy-Charles de Gaulle airport*

The French Red Cross runs a 24-hour permanent desk in the transit zone of Roissy-Charles de Gaulle Paris airport, which has 164 detention places. It provides counselling and humanitarian assistance to migrants who do not fulfil the legal requisites to enter French territory, or who ask for asylum at the border. Red Cross staff and volunteers monitor the living conditions in the transit area and advocate better respect for the rights and living standards of detainees. With regards to unaccompanied minors in the transit zone, a team of Red Cross volunteers called ad-hoc administrators serve as their temporary legal guardians during legal proceedings with migration officers and juvenile protection judges.

5. Next steps and recommended actions

Various courses of action are available to EU National Societies to help to reduce migrant vulnerability at borders. These include actions to support the setting up of border monitoring mechanisms as well as to respond to any identified shortfalls. Such actions could include:

- Support the setting up of independent monitoring mechanisms at land, air and sea borders and detention centres through advocacy, and / or implementation of monitoring where and when border controls take place. The latter would require the development of a code of conduct for Red Cross Red Crescent monitoring activities at borders. Indeed, under certain circumstances “on the spot monitoring” could present a risk and should be avoided. Our presence during the expulsion process at the border may be misunderstood by those being returned, who may see us as approving the process.¹⁵
- Increase Red Cross presence and reception activities at land, sea and air borders to assist, inform and support all migrants. This includes awareness raising and training for volunteers and staff on the identification of vulnerable migrants.
- Collaborate with other actors to support the setting up of border monitoring activities. Many violations could be avoided through enhanced communication and awareness of the humanitarian situation at borders.
- Provide training and guidance for police, border management authority staff and other frontline practitioners, and support them to identify vulnerable migrants including asylum seekers and victims of trafficking, as well as to make them aware of existing legal frameworks and referral mechanisms.
- Enhance collaboration and cooperation with other civil society actors in countries of origin, destination and transit as well as with local and national authorities, in order to identify concrete ways of reducing the vulnerability of migrants crossing borders.

6. Further resources

European Union Agency for Fundamental Rights, [Fundamental rights at airports: border checks at five international airports in the European Union](#), November 2014.

European Union Agency for Fundamental Rights, [Fundamental rights at land borders: findings from selected European Union border crossing points](#), November 2014.

IRCT, [Recognising Victims of Torture in National Asylum Procedures: A comparative overview of early identification of victims and their access to medico-legal reports in asylum-receiving countries](#), 2013.

¹⁵ Parallels can be drawn with the Position of the International Committee of the Red Cross regarding participation by the International Red Cross and Red Crescent Movement in the expulsion of migrants by the public authorities according to which the humanitarian service provided by Movement staff who accompany deportees appears paltry compared with the problems and risks involved, in particular as regards the fundamental principle of neutrality.

Kogovšek Neža (ed), [Border monitoring methodologies - Stakeholders' Manual for Establishing a Border Monitoring Mechanism](#), LL.M. Peace Institute, Slovenia November 2006

OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#).

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UN Office of the High Commissioner for Human Rights, [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), 20 May 2002, E/2002/68/Add.1.

UNHCR, Association for the prevention of torture, international detention coalition, [Monitoring immigration detention – Practical manual](#), 2014.